

**REPORTS**  
**OF**  
**Cases Argued and Determined**  
**IN THE**  
**COURT of CLAIMS**  
**OF THE**  
**STATE OF ILLINOIS**

---

**VOLUME 16**

**Containing cases in which opinions were filed and orders of dismissal  
entered, without opinion, between July 1, 1946  
and June 30, 1947.**

**SPRINGFIELD, ILLINOIS**  
**1947**

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**[Printed by authority of the State of Illinois.]**



**(49228)**

## PREFACE

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The opinions of the Court of Claims herein reported are published by authority of the provisions of Section 18 of an Act entitled "An Act to create the Court of Claims, to prescribe its powers and duties, and to repeal an Act herein named," approved July 17, 1945.

EDWARD J. BARRETT,

*Secretary of State and  
~~Ex~~ Officio Clerk of the  
Court of Claims.*

## OFFICERS OF THE COURT

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### JUDGES

ROBERT P. ECKERT, JR., *Chief Justice,*  
Freeport, Illinois

WM. WIRT DAMRON, *Judge,*  
Harrisburg, Illinois

CLARENCE N. BERGSTROM, *Judge,*  
Chicago, Illinois

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GEORGE F. BARRETT, *Attorney General*

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EDWARD J. BARRETT, *Secretary of State and*  
*Ex-Officio Clerk of the Court*

BELLE P. WHITE, *Deputy Clerk*  
Springfield, Illinois

## **RULES OF THE COURT OF CLAIMS OF THE STATE OF ILLINOIS**

Adopted pursuant to An Act to create the Court of Claims, to prescribe its powers and duties, and to repeal an Act herein named. (Approved July 17, 1945. L. 1945, p. 660.)

### **. TERMS OF COURT**

Rule 1. The Court shall hold a regular session at the Capital of the State on the second Tuesday of January, May and November of each year, and such special sessions at such places as it deems necessary to expedite the business of the Court.

### **PLEADINGS**

Rule 2. Pleadings and practice at common law as modified by the Civil Practice Act of Illinois shall be followed except as is herein otherwise provided.

Rule 3. The original and five copies of all pleadings shall be filed with the Clerk and the original shall be provided with a suitable cover, bearing the title of the Court and cause, together with a proper designation of the pleading printed or plainly written thereon.

Rule 4. (a) Cases shall be commenced by a verified complaint which shall be filed with the Clerk of the Court. A party filing a case shall be designated as the claimant and the State of Illinois shall be designated as the respondent. The Clerk will note on the complaint and each copy the date of filing and deliver one of said copies to the Attorney General.

(b) Only a licensed attorney and an attorney of record in said case will be permitted to appear for or on behalf of any claimant, but a claimant, although not a licensed attorney, may prosecute his own claim in person. All appearances, including substitution of attorneys, shall be in writing and filed in the case.

(c) The complaint shall be printed or typewritten and shall be captioned substantially as follows :

IN THE COURT OF CLAIMS OF THE  
STATE OF ILLINOIS

A. B.,  vs. STATE OF ILLINOIS,	Claimant   Respondent	}	No.
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Rule 5. (a) The claimant shall state whether or not his claim has been presented to any State department or officer thereof, or to any person, corporation or tribunal, and if so presented, he shall state when, to whom, and what action was taken thereon.

(b) The claimant shall in all cases set forth fully in his petition the claim, the action thereon, if any, on behalf of the State, what persons are owners thereof or interested therein, when and upon what consideration such persons became so interested; that no assignment or transfer of the claim or any part thereof or interest therein has been made, except as stated in the petition; that the claimant is justly entitled to the amount therein claimed from the State of Illinois, after allowing all just credits; and that claimant believes the facts stated in the petition to be true.

(c) If the claimant bases his complaint upon a contract or other instrument in writing a copy thereof shall be attached thereto for reference.

Rule 6. (a) A bill of particulars, stating in detail each item and the amount claimed on account thereof, shall be attached to the complaint in all cases.

(b) Where the claim arises under the Workmen's Compensation Act or the Occupational Diseases Act, the claimant shall set forth in the complaint all payments, both of compensation and salary, which have been received by him or by others on his behalf since the date of the injury; and he shall also set forth in separate items the amount incurred, and the amount paid for medical, surgical and hospital attention on account of his injury, and the portion thereof, if any, which was furnished or paid for by the respondent.

Rule 7. If the claimant be an executor, administrator, guardian or other representative appointed by a judicial tribunal, a duly authenticated copy of the record of appointment must be filed with the complaint.

Rule 8. If the claimant die pending the suit the death may be suggested on the record, and the legal representative, on filing a duly authenticated copy of the record of appointment as executor or administrator, may be admitted to prosecute the suit by special leave of the Court. It is the duty of the claimant's attorney to

suggest the death of the claimant when that fact first becomes known to him. ,

**Rule 9.** Where any claim has been referred to the Court by the Governor or either House of the General Assembly, any party interested therein may file a verified complaint at any time prior to the next regular session of the Court. If no such person files a complaint, as aforesaid, the Court may determine the case upon whatever evidence it shall have before it, and if no evidence has been presented in support of such claim, the case may be stricken from the docket with or without leave to reinstate, in the discretion of the Court.

**Rule 10.** A claimant desiring to amend his complaint, or to introduce new parties may do so at any time before he has closed his testimony, without special leave, by filing five copies of an amended complaint, but any such amendment or the right to introduce new parties shall be subject to the objection of the respondent, made before or at final hearing. Any amendments made subsequent to the time the claimant has closed his testimony must be by leave of Court.

**Rule 11.** The respondent shall answer within thirty days after the filing of the complaint, and the claimant shall reply within fifteen days after the filing of said answer, unless the time for pleading be extended; provided, that if the respondent shall fail so to answer, a general traverse or denial of the facts set forth in the complaint shall be considered as filed.

#### EVIDENCE

**Rule 12.** At the next succeeding term of court after a case is at issue, the Court, upon call of the docket, shall set the same for hearing.

**Rule 13.** All evidence shall be taken in writing in the manner in which depositions in chancery are usually taken. All evidence, when taken and completed by either party shall be filed with the Clerk on or before the first day of the next succeeding regular session of the Court.

**Rule 14.** All costs and expenses of taking evidence on behalf of the claimant shall be borne by the claimant, and the costs and expenses of taking evidence on behalf of the respondent shall be borne by the respondent, except in cases arising under the Workmen's Compensation and Occupational Diseases Acts.

**Rule 15.** If either party fails to file the evidence as herein required, the Court may, in its discretion, proceed with its determination of the case.

**Rule 16.** All records and files maintained in the regular course of business by any State department, commission, board or agency of the respondent and all departmental reports made by

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any officer thereof relating to any matter or case pending before the Court shall be prima facie evidence of the facts set forth therein; provided, a copy thereof shall have been first duly mailed or delivered by the Attorney General to the claimant or his attorney of record.

### ABSTRACTS AND BRIEFS

**Rule 17.** The claimant in all cases where the transcript of evidence exceeds twenty-five pages in number shall furnish a complete typewritten or printed abstract of the evidence, referring to the pages of the transcript by numeral on the margin of the abstract. The evidence should be condensed in narrative form in the abstract so as to present clearly and concisely its substance. The abstract must be sufficient to present fully all material facts contained in the transcript and it will be taken to be accurate and sufficient for a full understanding of such facts, unless the respondent shall file a further abstract, making necessary corrections or additions.

**Rule 18.** When the transcript of evidence does not exceed twenty-five pages in number the claimant may file the original and five copies of such transcript in lieu of typewritten or printed abstracts of the evidence, otherwise the original and five copies of an abstract of the evidence shall be filed with the Clerk. The original shall be provided with a suitable cover, bearing the title of the Court and case, together with the name and address of the attorney filing the same printed or plainly written thereon.

**Rule 19.** Each party may file with the Clerk the original and five copies of a typewritten or printed brief setting forth the points of law upon which reliance is had, with reference made to the authorities sustaining their contentions. Accompanying such briefs there may be a statement of the facts and an argument in support of such briefs. The original shall be provided with a suitable cover, bearing the title of the Court and case, together with the name and address of the attorney filing the same printed or plainly written thereon. Either party may waive the filing of his brief and argument by filing with the Clerk a written notice and five copies to that effect.

**Rule 20.** The abstract, brief and argument of the claimant must be filed with the Clerk on or before thirty days after all evidence has been completed and filed with the Clerk, unless the time for filing the same is extended by the Court or one of the Judges thereof. The respondent shall file its brief and argument not later than thirty days after the filing of the brief and argument of the claimant, unless the time for filing the brief of claimant has been extended, in which case the respondent shall have a similar extension of time within which to file its brief. Upon good cause shown further time to file abstract, brief and argument or a reply brief

of either party may be granted by the Court or by any Judge thereof.

**Rule 21.** If either party shall fail to file either abstracts or briefs within the time prescribed by the rules, the Court may proceed with its determination of the case.

#### EXTENSION OF TIME

**Rule 22.** Either party, upon notice to the other party, may make application to this Court, or any Judge thereof, for an extension of time for the filing of pleadings, abstracts or briefs.

#### MOTIONS

**Rule 23.** Each party shall file with the Clerk the original and five copies of all motions presented. The original shall be provided with a suitable cover, bearing the title of the Court and case, together with the name and address of the attorney filing the same printed or plainly written thereon.

**Rule 24.** In case a motion to dismiss is denied, the respondent shall plead within thirty days thereafter, and if a motion to dismiss be sustained, the claimant shall have thirty days thereafter within which to file petition for leave to amend his complaint.

#### ORAL ARGUMENTS

**Rule 25.** Either party desiring to make oral argument shall file a notice of his intention to do so with the Clerk at least ten days before the session of the Court at which he wishes to make such argument,

#### REHEARINGS

**Rule 26.** A party desiring a rehearing in any case shall, within thirty days after the filing of the opinion, file with the clerk the original and five copies of his petition for rehearing. The petition shall state briefly the points supposed to have been overlooked or misapprehended by the Court, with proper reference to the particular portion of the original brief relied upon, and with authorities and suggestions concisely stated in support of the points. Any petition violating this rule will be stricken.

**Rule 27.** When a rehearing is granted, the original briefs of the parties and the petition for rehearing, answer and reply thereto shall stand as files in the case on rehearing. The opposite party shall have twenty days from the granting of the rehearing to answer the petition, and the petitioner shall have ten days thereafter within which to file his reply. Neither the claimant nor the respondent shall be permitted to file more than one application or petition for a rehearing.

**Rule 28.** When a decision is rendered against a claimant, the Court, within thirty days thereafter, may grant a new trial for any reason which, by the rules of common law or chancery in suits between individuals, would furnish sufficient ground for granting a new trial.

#### RECORDS AND CALENDAR

**Rule 29.** (a) The Clerk shall record all orders of the Court, including the final disposition of cases. He shall keep a docket in which he shall enter all claims filed, together with their number, date of filing, the name of claimants, their attorneys of record and respective addresses. As papers are received by the Clerk, in course, he shall stamp the filing date thereon and forthwith mail to opposing counsel a copy of all orders entered, pleadings, motions, notices and briefs as filed; such mailing shall constitute due notice and service thereof.

(b) Within ten days prior to the first day of each session of the Court, the Clerk shall prepare a calendar of the cases set for hearing, and of the cases to be disposed of at such session, and deliver a copy thereof to each of the Judges and to the Attorney General.

**Rule 30.** Whenever on peremptory call of the docket any case appears in which no positive action has been taken, and no attempt made in good faith to obtain a decision or hearing of the same, the Court may, on its own motion, enter an order therein ruling the claimant to show cause on or before the first day of the next succeeding regular session why such case should not be dismissed for want of prosecution and stricken from the docket. Upon the claimant's failure to take some affirmative action to discharge or comply with said rule, prior to the first day of the next regular session after the entry of such order, such case may be dismissed and stricken from the docket with or without leave to reinstate on good cause shown. On application and a proper showing made by the claimant the Court may, in its discretion, grant an extension of time under such rule to show cause. The fact that any case has been continued or leave given to amend, or that any motion or matter has not been ruled upon will not alone be sufficient to defeat the operation of this rule. The Court may, during the second day of any regular session, call its docket for the purpose of disposing of cases under this rule.

#### FEEES AND COSTS

**Rule 31.** The following schedule of fees shall apply:

Filing of complaint (except cases under the Workmen's Compensation Act and the Occupational Diseases Act)	\$10.00
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Certified copies of opinions :

Five pages or less. ....	\$ 0.25
For more than five pages and not more than ten pages .....	0.35
For more than ten pages and not more than twenty pages .....	0.45
For more than twenty pages.. ....	0.50

Rule 32. Every claim cognizable by the Court and not otherwise sooner barred by law,\* shall be forever barred from prosecution therein unless it is filed with the Clerk of the Court within two years after it first accrues, saving to infants, idiots, lunatics, insane persons and persons under other disability at the time the claim accrues two years from the time the disability ceases.

#### ORDER OF THE COURT

The above and foregoing rules were adopted as the rules of the Court of Claims of the State of Illinois on the 11th day of September, A. D. 1945, to be in full force and effect from and after the first day of November, A. D. 1945.

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\* See limitation provisions of specific statutes, including Workmen's Compensation and Occupational Diseases Acts.

## COURT OF CLAIMS LAW

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*AN ACT to create the Court of Claims, to prescribe its powers and duties, and to repeal an Act herein named.*

SECTION 1. The Court of Claims, hereinafter called the court, is created. It shall consist of three judges, to be appointed by the Governor by and with the advice and consent of the Senate, one of whom shall be appointed chief justice. In case of vacancy in such office during the recess of the Senate, the Governor shall make a temporary appointment until the next meeting of the Senate, when he shall nominate some person to fill such office. If the Senate is not in session at the time this Act takes effect, the Governor shall make temporary appointments as in case of vacancy.

§ 2. The term of office of each judge first appointed pursuant to this Act shall commence July 1, 1945 and shall continue until the third Monday in January, 1949, and until a successor is appointed and qualified. After the expiration of the terms of the judges first appointed pursuant to this Act, their respective successors shall hold office for a term of four years from the third Monday in January of the year 1949 and each fourth year thereafter and until their respective successors are appointed and qualified.

§ 3. Before entering upon the duties of his office, each judge shall take and subscribe the constitutional oath of office and shall file it with the Secretary of State.

§ 4. Each judge shall receive a salary of \$4,000.00 dollars per annum payable in equal monthly installments.

§ 5. The court shall have a seal with such device as it may order.

§ 6. The court shall hold a regular session at the Capital of the State beginning on the second Tuesday of January, May and November, and such special sessions at such places as it deems necessary to expedite the business of the court.

§ 7. The court shall record its acts and proceedings. The Secretary of State, ex-officio, shall be clerk of the court, but may appoint a deputy, who shall be an officer of the court, to act in his stead. The deputy shall take an oath to discharge his duties faithfully and shall be subject to the direction of the court in the performance thereof.

The Secretary of State shall provide the court with a suitable court room, chambers and such office space as is necessary and proper for the transaction of its business.

§ 8. The Court shall have jurisdiction to hear and determine the following matters :

A. All claims against the state founded upon any law of the State of Illinois, or upon any regulation thereunder by an executive or administrative officer or agency.

B. All claims against the state founded upon any contract entered into with the State of Illinois.

C. All claims against the State for damages in cases sounding in tort, in respect of which claims the claimants would be entitled to redress against the State of Illinois, at law or in chancery, if the State were suable, and all claims sounding in tort against The Board of Trustees of the University of Illinois; provided, that an award for damages in a case sounding in tort shall not exceed the sum of \$2,500.00 to or for the benefit of any claimant. The defense that the State or The Board of Trustees of the University of Illinois is not liable for the negligence of its officers, agents, and employees in the course of their employment shall not be applicable to the hearing and determination of such claims.

D. All claims against the State for personal injuries or death arising out of and in the course of the employment of any State employee and all claims against The Board of Trustees of the University of Illinois for personal injuries or death suffered in the course of, and arising out of the employment by The Board of Trustees of the University of Illinois of any employee of the University, the determination of which shall be in accordance with the substantive provisions of the Workmen's Compensation Act or the Workmen's Occupational Diseases Act, as the case may be.

E. All claims for recoupment made by the State of Illinois against any claimant.

§ 9. The Court may:

A. Establish rules for its government and for the regulation of practice therein; appoint commissioners to assist the court in such manner as it directs and discharge them at will; and exercise such powers as are necessary to carry into effect the powers herein granted.

B. Issue subpoenas to require the attendance of witnesses for the purpose of testifying before it, or before any judge of the Court, or before any notary public, or any of its commissioners, and to require the production of any books, records, papers or documents that may be material or relevant as evidence in any matter pending before it. In case any person refuses to comply with any subpoena issued in the name of the chief justice, or one of the judges, attested by the clerk, with the seal of the court attached, and served upon the person named therein as a summons at common law is served, the circuit court of the proper county, on application of the clerk

of the court, shall compel obedience by attachment proceedings, as for contempt, as in a case of a disobedience of the requirements of a subpoena from such court on a refusal to testify therein.

§ 10. The judges, commissioners and the clerk of the court may administer oaths and affirmations, take acknowledgments of instruments in writing, and give certificates of them.

§ 11. The claimant shall in all cases set forth fully in his petition the claim, the action thereon, if any, on behalf of the State, what persons are owners thereof or interested therein, when and upon what consideration such persons became so interested; that no assignment or transfer of the claim or any part thereof or interest therein has been made, except as stated in the petition; that the claimant is justly entitled to the amount therein claimed from the State of Illinois, after allowing all just credits; and that claimant believes the facts stated in the petition to be true. The petition shall be verified, as to statements of facts, by the affidavit of the claimant, his agent, or attorney.

§ 12. The court may direct any claimant to appear, upon reasonable notice, before it or one of its judges or commissioners or before a notary and be examined on oath or affirmation concerning any matter pertaining to his claim. The examination shall be reduced to writing and be filed with the clerk of the court and remain as a part of the evidence in the case. If any claimant, after being so directed and notified, fails to appear or refuses to testify or answer fully as to any material matter within his knowledge, the court may order that the case be not heard or determined until he has complied fully with the direction of the court.

§ 13. Any judge or commissioner of the court may sit at any place within the State to take evidence in any case in the court.

§ 14. Whenever any fraud against the State of Illinois is practiced or attempted by any claimant in the proof, statement, establishment, or allowance of any claim or of any part of any claim, the claim or part thereof shall be forever barred from prosecution in the court.

§ 15. When a decision is rendered against a claimant, the court may grant a new trial for any reason which, by the rules of common law or chancery in suits between individuals, would furnish sufficient ground for granting a new trial.

§ 16. Concurrence of two judges is necessary to the decision of any case.

§ 17. Any final determination against the claimant on any claim prosecuted as provided in this Act shall forever bar any further claim in the court arising out of the rejected claim.

§ 18. The court shall file with its clerk a written opinion in each case upon final disposition thereof. All opinions shall be compiled and published annually by the clerk of the court.

§ 19. The Attorney General, or his assistants under his direction, shall appear for the defense and protection of the interests of the State of Illinois in all cases filed in the court, and may make claim for recoupment by the State.

§ 20. At every regular session of the General Assembly, the clerk of the court shall transmit to the General Assembly a complete statement of all decisions in favor of claimants rendered by the court during the preceding two years, stating the amounts thereof, the persons in whose favor they were rendered, and a synopsis of the nature of the claims upon which they were based. At the end of every term of court, the clerk shall transmit a copy of its decisions to the Governor, to the Attorney General, to the head of the office in which the claim arose, to the State Treasurer, to the Auditor of Public Accounts, and to such other officers as the court directs.

§ 21. The Court is authorized to impose, by uniform rules, a fee of \$10.00 for the filing of a petition in any case; and to charge and collect for each certified copy of its opinions a fee of twenty-five cents for five pages or less, thirty-five cents for more than five pages and not more than ten pages, forty-five cents for more than ten pages and not more than twenty pages, and fifty cents for more than twenty pages. All fees and charges so collected shall be forthwith paid into the State Treasury.

§ 22. Every claim cognizable by the court and not otherwise sooner barred by law shall be forever barred from prosecution therein unless it is filed with the clerk of the court within two years after it first accrues, saving to infants, idiots, lunatics, insane persons and persons under other disability at the time the claim accrues two years from the time the disability ceases.

§ 23. It is the policy of the General Assembly to make no appropriation to pay any claim against the State, cognizable by the court, unless an award therefor has been made by the court.

§ 24. "An Act to create the Court of Claims and to prescribe its powers and duties," approved June 25, 1917, as amended, is repealed. All claims pending in the Court of Claims created by the above Act shall be heard and determined by the court created by this Act in accordance with this Act. All of the records and property of the Court of Claims created by the Act herein repealed shall be turned over as soon as possible to the court created by this Act.

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## CASES ARGUED AND DETERMINED IN THE COURT OF CLAIMS OF THE STATE OF ILLINOIS

(No. 3025—Claimant awarded '\$1,646.12.')

ELVA JENNINGS PENWELL, Claimant, vs. STATE OF ILLINOIS,  
Respondent.

*Opinion filed September 12, 1946.*

JOHN W. PREIHS, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR  
NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when award may be made under.* Where a Supervisor at the Illinois Soldiers' and Sailors' Children's School at Normal, Illinois, sustains accidental injuries, arising out of and in the course of her employment, an award for compensation for such injuries may be made and for expenses of necessary medical, surgical and hospital services incurred as are reasonably required to relieve her of the effects of the injury; Section 8, paragraph (a) of the Workmen's Compensation Act. *Penwell vs. State*, 11 C. C. R. 365.

ECKERT, C. J.

Claimant was injured on February 2, 1936, in an accident arising out of and in the course of her employment as a Supervisor at the Illinois Soldiers' and Sailors' Children's School at Normal, Illinois. The injury was serious, causing temporary blindness and general paralysis. The facts are fully detailed in the case of *Penwell v. State*, 11 C. C. R. 365, in which an award was made to the claimant of \$5,500.00 for total permanent disability, \$8,215.95 for necessary medical, surgical, and hospital services expended or incurred to and including October 22, 1940, and an annual pension of \$660.00. On February 10, 1942, a further award was made to claimant for medical and hospital expenses incurred from October 22, 1940, to January 1, 1942, in the amount of

\$1,129.82. On March 10, 1943, a further award was made to claimant for medical and hospital expenses from January 1, 1942, to December 31, 1942, in the amount of \$1,164.15. On March 15, 1944, a further award was made to claimant for medical and hospital expenses from January 1, 1943, to and including September 30, 1943, in the amount of \$853.07. On April 17, 1945, a further award was made to claimant for medical and nursing expenses incurred from October 1, 1943, to and including February 28, 1945, in the amount of \$1,955.29. Claim is now made for an additional award of \$1,666.12 for medical and nursing expenses from February 28, 1945, to and including April 1, 1946.

Claimant remains totally paralyzed from the waist down, the paralysis being of a spastic type; her physical condition has not improved. She has no control over her lower limbs, nor over urine and faeces. From February 28, 1945, to and including April 1, 1946, she has been required, to relieve her of her injury, and to prevent deformity and to stimulate circulation, and for relief of bed sores, to employ and receive medical services and nursing attention. She remains helpless, requiring the services of nurses or attendants to move her to and from her bed, to change her bed clothing at least three or four times a day, to administer light treatment to the affected parts of her paralyzed body, and to rub her body with ointments prescribed by her physician. Because of the complete paralysis of her lower abdomen and legs, the functioning of her kidneys and bladder is impaired, and medical attention is required to flush these organs and to prevent infection arising from her impaired circulation and paralysis. The services of a physician are needed almost daily and must be rendered in her home.

Claimant has therefore employed a physician on a

monthly basis at a charge of \$75.00 per month, which is a lesser rate than ordinarily charged, and for which she seeks reimbursement in the total sum of \$825.00. Claimant also seeks reimbursement, at the rate of fifty cents per day, in the total amount of \$182.50, for board and room of attending nurses. Such expenditure obviates the employment of both a day and a night nurse. In addition, claimant has expended, for nursing services, \$618.50, and for drugs and supplies, \$40.12. She has submitted to the court, with her verified petition, the original receipts and vouchers showing payment of these respective items, except a medical expenditure of \$75.00 for which a receipt for \$55.00 only is submitted. This must be disallowed to the extent of \$20.00.

This court has heretofore held that under Section 8, paragraph (a) of the Workmen's Compensation Act, claimant is entitled to such care as is reasonably required to relieve her of the effects of the injury. (*Penwell v. State, supra.*) There has been no change in claimant's physical condition to justify the denial of an award at this time. The services claimed appear to have been reasonably required and the charges to be reasonable and just.

Award is, therefore, made to the claimant for medical and nursing expenses from February 28, 1945, to and including April 1, 1946, in the sum of \$1,646.12, which has accrued and is payable forthwith. The court reserves for future determination claimant's need for further medical, surgical and hospital services.

(No. 3718—Claim denied.)

WAYNE MELLON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed September 12, 1946.*

JOHN T. REARDON, of Quincy, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

**WORKMEN'S COMPENSATION ACT—when claim for partial disability will be denied.** Where there is no showing in the record as to any difference between the average amount which claimant earned before the accident and the average amount which he is earning or is able to earn in same suitable employment or business since the accident, no award can be made for partial incapacity; Section 8, paragraph (D) of the Act.

*Evans vs. State*, 13 C. C. R. 65.

*Doyle vs. State*, 13 C. C. R. 179.

ECKERT, C. J.

On May 29, 1941, the claimant, Wayne Mellon, while in the employ of the respondent, and while standing on a scaffolding painting a bridge, slipped and fell, injuring his back and left hip. He alleges that he has incurred medical bills in the amount of \$150.00; that his earnings during the year immediately preceding the accident were \$1,200.00; and that he has received on account of temporary total disability \$138.84. He seeks an award for medical services, for additional total temporary, and for complete and permanent disability.

At the time of the injury the employer and employee were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course of claimant's employment.

Immediately following the accident, claimant was taken to the office of Dr. A. R. Denny at Perry, Illinois, and at the order of Dr. Denny, claimant was taken by

ambulance to St. Mary's Hospital in Quincy, where he remained under the care of Dr. J. E. Miller until June 20th. He then returned to his home.

Various doctors treated the claimant after his discharge from the hospital on June 20th. They were unable to find any objective symptoms. Despite this fact, the Division arranged for further treatments in the hope of obviating the complaints, and claimant was paid for temporary total disability for the period of May 30th to August 31st, 1941. The respondent also paid all medical and hospital treatments in the total amount of \$332.98:

The claimant, testifying in his own behalf, stated that he lives with his sister on a farm of ninety acres; that since the injury on May 29, 1941, he worked for ten days sorting apples at an orchard, and has worked on his own farm with his father, taking care of cattle and hogs, and planting and cultivating the fields. He stated that he could not ride a tractor, but could ride a gang plow; that prior to his injury and his employment by the respondent, he had done general farming; that since his injury there were numerous farm operations which he is unable to do.

It is clear from the record that claimant is not entitled to an award for medical expenses since these were all paid by the respondent. It is also clear that claimant is not entitled to further payments on account of temporary total disability since he was advised on August 20, 1941, that he was able to return to work, and since the respondent did not terminate the compensation payments until August 31, 1941.

It is also clear from the record that claimant is not entitled to an award for total permanent disability. There is no doubt that claimant received an injury which arose out of and in the course of his employment, but

from his own testimony, he has been, and is able to do farm work.

There is no showing in the record as to any difference between the average amount which claimant earned before the accident and the average amount which he is earning or is able to earn in some suitable employment or business since the accident. Under paragraph (d) of Section 8 of the Workmen's Compensation Act of this State, in the absence of such a showing, no award can be made for partial incapacity. (*Evans v. State*, 13 C. C. R. 65; *Doyle v. State*, 13 C. C. R. 179.)

Since claimant has failed to establish his claim for either total permanent disability or partial permanent disability, and since the record shows that his medical expenses and compensation for total temporary disability have been fully paid by the respondent, an award is denied.

Case dismissed.

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(No. 3778—Claimant awarded \$20.00.)

WILLIAM F. DAHLER, Claimant, *vs.* STATE OF ILLINOIS,  
Respondent.

*Opinion filed September 12, 1946.*

PENCE B. ORR, Joliet, Illinois, attorney for claimant:

GEORGE F. BARRETT, Attorney General, for respondent;  
WM. L. MORGAN, Assistant Attorney General, of counsel.

WORKMEN'S COMPENSATION ACT—*claim for partial loss of vision—unless there are or have been objective symptoms or conditions proven—and not within the physical or mental control of the injured person—an award will be denied.* Where compensation under the Workmen's Compensation Act is sought for partial loss of vision of eyes, an award is justified only if such injuries as are proven by competent evidence, of which there are or have been objective symptoms and conditions proven, not within the physical or mental control of the injured em-

ployee himself, and where the only symptoms are those disclosed by such employee, no award for compensation can be made.

*SAME—burden of proof on claims under—is on claimant.* In claims for compensation under the Workmen's Compensation Act, the burden of proof is on claimant to prove his claim by a preponderance or greater weight of evidence.

### DAMRON, J.

This is a claim for benefits-under the Workmen's Compensation Act. The record consists of the following :

1. Complaint.
2. Departmental Report.
3. Rule to show cause.
4. Motion of claimant for discharge of rule supported by affidavit.
5. Second rule to show cause.
6. Motion of claimant for discharge of rule supported by affidavit.
7. Claimant's brief and argument.
8. Copy of transcript of evidence.
9. Bill of D. V. Sheffner, Court Reporter.
10. Brief and argument of respondent.

The evidence in the case was taken on the 8th day of May 1946 at Joliet, Illinois. It shows that on the 9th day of October 1942, this claimant, while employed by respondent as Assistant Foreman in the Master Mechanics Department at the State Penitentiary at Joliet, Illinois, was struck on the head with a gun wielded by a prisoner, one of a group of inmates who was attempting to escape from the institution. The evidence further discloses that as a result of said blow, the claimant was incapacitated for a period of five days after which he returned to his normal employment. Claimant was given immediate medical attention at the prison hospital; the wound on his head was treated and he was taken to his home. Testimony shows that the wound itself gave the claimant very little trouble but left a scar on his head.

Claimant further testified that thereafter his eyes commenced getting weaker and he suffered considerable pain from frequent headaches. Claimant testified that at

the time of the attack he was 61 years of age and had been wearing glasses for ten years and the glasses he was wearing at the time of the taking of the testimony had been made for him by Dr. Howard N. Flexer, Eye, Ear, Nose, and Throat Specialist of Joliet, a member of the prison medical staff.

Dr. William Fletcher, physician and surgeon of Joliet, was called on behalf of claimant. This physician testified that he had been employed at the Joliet Penitentiary for about 18 years as a physician and that he had known the claimant for about 25 years and had been the family physician; that so far as he knew, claimant's health prior to the time he was injured, was good. This statement was based on the fact that claimant had never consulted him as a physician. He testified that in his opinion, based on his general experience and from knowing claimant personally both before and after he received this injury, that claimant's headaches and eye condition might, or could have been, caused by the blow on the head which claimant received on the 9th day of October 1942.

Over the objection of counsel for the respondent, a letter was introduced in evidence, from Dr. Howard N. Flexer, dated April 19, 1946, which is in words and figures as follows:

"I, Howard N. Flexer, M. D., do hereby state that I have been engaged in the specialty of Eye, Ear, Nose and Throat in Joliet, Ill., for the past twenty-six years.

I am also the Eye, Ear, Nose and Throat Specialist at the Illinois State Penitentiaries at Joliet, Ill.

I hereby certify that I examined the eyes of Mr. William F. Dahler, guard, employed at Stateville Penitentiary, on February 29, 1944. At that time he was fitted for spectacles by me. His vision in each eye singly was 20/50 uncorrected, and 20/30 corrected, which means that he has a visual loss of 16.5% uncorrected, and 5.5% corrected in each eye.

I again examined him on April 18, 1946, at which time his vision was 20/100 in each eye singly, a loss of 44% in vision. With the above

mentioned spectacles, his vision is now but 20/50 or a visual loss of 16.5%.

His vision is now, 27.5% worse than it was in 1944. With the history of a blow on the head, as this man gives, there might be some close relationship to his visual loss, from said blow."

This letter was not admissible and the objection of the Attorney General must be sustained. We have carefully considered the evidence remaining in this record. Under the law, all of the evidence offered by claimant on his own behalf, in reference to his ill-being must be considered as subjective and the testimony of Dr. William Fletcher, called on behalf of claimant, does not tend to support the evidence of loss of vision to claimant's eyes.

In claims for compensation under the Workmen's Compensation Act, the burden of proof is on claimant to prove his claim by a preponderance or greater weight of the evidence.' *Alexander vs. State*, 13 C. C. R. 5; *Brade-cich vs. State*, 13 C. C. R. 56; *Pearman vs. State*, 13 C. C. R. 84, and awards can only be made for injuries and only such injuries, as are proven by competent evidence, of which there are, or have been objective conditions or symptoms proven, not within the physical or mental control of the injured employee himself, and unless there are or have been objective conditions or symptoms proven, no award for compensation can be made. *Nichols vs. State*, 10 C. C. R. 80; *Wasson vs. State*, 10 C. C. R. 497; *Peck vs. State*, 10 C. C. R. 56; *Sprague vs. State*, 14 C. C. R. 116.

His claim for partial loss of vision to his eyes due to the accident has not been proven. The proof in reference to this claim does not comply with the rule as enunciated in the above cited cases. An award is therefore denied.

D. V. Sheffner has filed a claim for taking and tran-

scribing the depositions in this case. The charges amounting to \$20.00 are found by us to be fair, reasonable and customary. Therefore, an award is hereby entered in favor of claimant William F. Dahler for the use of D. V. Sheffner in the sum of Twenty (\$20.00) Dollars.

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(No. 3785—Claimant awarded \$366.00.)

**FLOYD COOK**, Claimant, vs. STATE OF ILLINOIS, Respondent.

*Opinion filed September 12, 1946.*

CHARLES G. SEIDEL, Elgin, Illinois, attorney for claimant.

GEORGE F. BARRETT, Attorney General, for respondent; WM. L. MORGAN, Assistant Attorney General, of counsel.

**WORKMEN'S COMPENSATION ACT**—*when award for temporary total, disability may be made under.* Where an employee of State sustains accidental injuries, arising out of and in the course of his employment, while engaged in hazardous work, an award for compensation may be made therefor in accordance with the Act.

**STIPULATION**—*when award may be made on.* Where a stipulation is entered into between the State and claimant under the Workmen's Compensation Act, for full settlement, of such claim by payment by the State of an amount agreed thereon, an award may be made on such stipulation, when same appears to be in accordance with the facts and law applicable thereto.

**DAMRON, J.**

This complaint was filed on the 29th day of March 1943. The record consists of said complaint, departmental report, transcript of evidence, stipulation, rule to show cause; abstract of evidence, and claimant's statement, brief, and argument.

The stipulation filed herein shows that claimant at the time of his injury was being paid \$225.00 per month without maintenance; that the State of Illinois, in the

operation of the Elgin State Hospital, is under the Workmen's Compensation Act, in that the employment is hazardous; that the questions presented to this Court are whether or not the claimant was injured in the course of and arising out of his employment, and whether or not proper notice was given under the Workmen's Compensation Act.

The evidence discloses that at the time of the filing of this complaint, the claimant was 46 years of age, was an employee of the Department of Public Welfare, working at Elgin State Hospital as a stationary engineer; that he entered the employ of the respondent in October 1920 as an attendant and was gradually promoted from that date to the 6th day of October 1942 to the last mentioned position.

The evidence discloses that on the last mentioned date, he was lifting a 50 lb. sack of lime in the engine room of the Elgin State Hospital for the purpose of putting the lime in a water softener; in order to place this material in the water softener, he was required to lift said sack above his head; the sack became loosened from his grip, struck him causing him to fall to the floor, the bag again fell back against him striking him in the stomach at the left side above the hip bone; that he suffered severe pain in his left side in the region of the groin. He went to Dr. Raymond G. Scott, Geneva, Illinois, for examination on October 6, 1942; that Dr. Scott after an examination of the claimant, diagnosed his condition; as a left inguinal hernia and recommended that an operation be performed upon the claimant in order to repair said hernia. Dr. Scott furnished claimant with a truss to be worn by him until the operation was performed. The record further discloses that on the same date, the claimant reported his injury to Benjamin D.

Burdick, the master mechanic at said institution, who was the immediate superior of the claimant.

The evidence further discloses that Burdick sent claimant to the general hospital on the grounds of the Elgin State Hospital where he was examined by Dr. Groner, who also informed claimant that he had suffered a hernia and that it could not be cured without an operation. Claimant testified that prior to the accident he had never had trouble before in the region of the stomach or the groins.

On November 24, 1944 the following stipulation was entered into by and between the attorneys of record:

"It is hereby stipulated and agreed by and between the above claimant by Charles G. Seidel, his attorney, and the above respondent by George F. Barrett, its attorney, as follows:

1. That the fair and reasonable cost of an operation to correct a left inguinal hernia is Three Hundred Dollars (\$300.00) and that the average temporary total disability due to such treatment is four (4) weeks."

Upon consideration of this record, we make the following findings: That the claimant and respondent were on the 4th day of October 1942, operating under the provisions of the Workmen's Compensation Act; that on the date last above mentioned, said claimant sustained accidental injuries which did arise out of and in the course of the employment and that notice was given said respondent within two days thereafter and claim for compensation on account thereof was made on said respondent within the time required under Section 8, par. (d-1) of the Act.

That the earnings of the claimant during the year next preceding the injury were \$2,700.00 and that the average weekly wage was \$51.92; that claimant at the time of the injury was 46 years of age and had no dependent children.

The Court finds that said claimant sustained a left inguinal hernia as a result of said accidental injury and that under the stipulation in this case, the respondent shall provide said claimant with the necessary medical, surgical, and hospital services to the amount of \$300.00 to cure or relieve from the effects of the injury as provided in paragraph (d-1) of Section 8 of said Act as amended. The Court further finds that it is provided in said stipulation that the respondent shall pay to the claimant a sum representing four weeks as temporary total compensation during the recovery period after said operation.,

An award is therefore entered in favor of claimant, Floyd Cook, in the sum of Three Hundred (\$300.00) Dollars for surgical and hospital expenses and the sum of Sixty-Six (\$66.00) Dollars for four weeks temporary total compensation at **\$16.50** per week making a total of Three Hundred Sixty-Six (\$366.00) Dollars.

The claimant having elected to select his own surgeon to perform this necessary operation, the payment of the above award in a lump sum to this claimant by the respondent shall extinguish and bar all claims for compensation for any disability suffered by claimant hereafter as a result of said injury.

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(No. 3848 and No. 3849—Consolidated Claimants awarded \$2,129.12.)

**CARL F. JESSE and JAMES R. CARPENTER**, Claimants, vs. **STATE OF ILLINOIS**, Respondent.

*Opinion Pled September 12, 1946.*

**PENCE B. ORR**, of Joliet, Illinois, for claimant.

**GEORGE F. BARRETT**, Attorney General; **WILLIAM L. MORGAN** and **C. ARTHUR NEBEL**, Assistants Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*where award may be made under for temporary total and permanent partial loss of vision or for the permanent and complete loss of its use.* Where employees of State sustain accidental injuries, arising out of and in the course of their employment, resulting in the partial loss of vision or the loss of sight of an eye, or for the permanent and complete loss of its use, awards for compensation for such injuries may be made in accordance with the provisions of the Act, upon compliance with the terms thereof and proper proof of claim.

**Sam**—*no provision therein for compensatzon for partaal loss of hearing.* The Workmen's Compensation Act does not provide for compensation for partial loss of hearing. Claimant failed to establish a causal connection between alleged loss of hearing and the injury in question.

**SAME**—*disfigurement—when not compensable under.* To justify an award for disfigurement, same must not only be permanent and serious, but must be such a disfigurement as affects a person's employment, and where such person is able to procure employment similar to that in which he was engaged at time of injury causing disfigurement, with no reduction of earnings as a consequence thereof, no award can be made for same. *Tyler vs. State of Illinois*, 12 C. C. R. 101.

ECKERT, C. J.

On 'June 12, 1945, at a special term of this court, an opinion was rendered in the consolidated case of Marie McAsey, Administratrix of the Estate of Edward J. McAsey, deceased, Carl F. Jesse, and James R. Carpenter, Claimants, vs. State of Illinois, Respondent, Nos. 3847, 3848, and 3849. An award was made to Marie McAsey, as Administratrix of the Estate of Edward J. McAsey, deceased, but the claims of Carl F. Jesse and James R. Carpenter were continued for consideration of further evidence as to the extent of the disabilities of the respective claimants. The facts are fully set forth in the former opinion.

Since the entry of that decision, further hearing was had on the Jesse and Carpenter claims, and further evidence was presented to establish the extent of their respective injuries. The court is now of the opinion that Carl F. Jesse, as a result of his injury, sustained a 16%

loss of vision in both eyes, and is entitled to an award for such loss. He has failed, however, to establish a causal connection between an alleged loss of hearing in his left ear and the injury in question, and has failed to prove a serious and permanent disfigurement to his face. A compensable disfigurement must not only be permanent and serious, but must be such a disfigurement as affects a person's employment. Where a person is able to procure employment similar to that in which he was engaged at the time of the injury which caused the disfigurement, with no reduction of earnings, an award is not justified. (*Tyler vs. State of Illinois*, 12 C. C. R. 101.) Claimant Jesse's present employment is the same as his employment at the time of the injury, at an increased salary. Furthermore, the photographs offered in evidence indicate no disfigurement that would affect his employment. No award can be made for loss of hearing or for disfigurement.

The court is also now of the opinion that James R. Carpenter, as a result of his injury, suffered a 28% loss of vision in both eyes, and is entitled to an award for such loss. His injury also necessitated the extraction of his upper teeth, and the insertion of a plate, at a total cost of \$260.00, for which an award may properly be made.

Claimant Jesse's earnings for the year immediately preceding his injuries were \$1,908.00, or an average weekly wage of \$36.69. He had three children under sixteen years of age dependent upon him for support. His compensation rate is, therefore, \$18.00 per week. The injury having occurred after July 1st, 1939, this must be increased 10%, making a total compensation rate of \$19.80. For the loss of sight of an eye, or for the permanent and complete loss of its use, claimant would be

entitled to 50% of his average weekly wage for 120 weeks. Since he has suffered a 16% loss of use of both eyes, he is entitled to an award of \$19.80 per week for a period of 38.4 weeks, or the sum of \$780.32.

Claimant Carpenter's earnings for the year immediately preceding his injuries were \$2,328.00, or an average weekly wage of \$44.77. He had no children under sixteen years of age dependent upon him for support. His compensation rate is, therefore, \$15.00 per week. The injury having occurred after July 1st, 1939, this must be increased 10%, making a total compensation rate of \$16.50. For the loss of sight of an eye, or for the permanent and complete loss of its use, claimant would be entitled to 50% of his average weekly wage for 120 weeks. Since he has suffered a 28% loss of use of both eyes, he is entitled to an award of \$16.50 per week for a period of 67.2 weeks, or the sum of \$1,108.80. To this must be added the necessary dental charges in the amount of \$260.00, making a total of \$1,368.80.

Julia Z. Hertz, Court reporter, of Joliet, Illinois, is entitled to payment of \$25.00 for reporting the testimony at the hearing on December 28, 1945.

An award is therefore entered in favor of claimant, Carl F. Jesse in the amount of \$760.32 payable forthwith, and an award is entered in favor of claimant, James R. Carpenter in the amount of \$1,368.80 payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees".

(No. 3880—Claim denied.)

MARIE PETERSON, Claimant, vs. STATE OF ILLINOIS, Respondent.

*Opinion Pled September 12, 1946.*

JOSEPH W. KOUCKY, of Chicago, for claimant.

GEORGE F. BARRETT, Attorney General, and WILLIAM L. MORGAN, for respondent.

WORKMEN'S COMPENSATION ACT—*claim for partial permanent liability under paragraph (D) Section 8 thereof—proof necessary to sustain.* Where claimant could return to work but failed to do so, there is no basis for determination of the difference between the average amount which an employee earned before the accident, and the average amount the employee is earning or is able to earn in some suitable employment or business after the accident, as provided in Section 8 (D) of the Workmen's Compensation Act, hence no award can be made for partial disability.

*SAME—burden of proof in claims under—is on claimant.* Where claimant **has** failed to sustain the burden of proof imposed upon her by the Workmen's Compensation Act—the claim will be denied.

ECKERT, C. J.

Claimant, Marie Peterson, filed her complaint on October 3rd, 1944 alleging that on August 23, 1944, while in the employ of the respondent at the Chicago State Hospital, and while in the discharge of her duties attending a patient, she slipped and fell, sustaining injury to her coccyx and back. The complaint contains the necessary allegations as to notice, and prays for an award for total temporary disability, for loss of use of both legs, and for complete and permanent disability.

Claimant, testifying on her own behalf, stated that while attempting to assist a patient in an epileptic seizure, she fell to the floor, injuring her coccyx; that she was then taken to Dr. Cohen, a member of the hospital staff, and was hospitalized for two weeks. Upon her release from the hospital, she returned to her home, and received no further medical treatment. When asked

whether she had returned to work, she stated she had not because "I am not doing as good as I could be, I was for a while. I feel pretty good and for the last two weeks I seem to have more pain again." She stated that her pain was at the bottom of her spine; that sometimes it is more severe while walking or working; that "it kind of bothers my back here, and I have that for the last week and a half."

Dr. Albert C. Field, called as a witness for claimant, testified that he examined claimant on December 28, 1944 and found some rigidity in the gluteal region which increased on palpations over the coccygeal region; that the tip of the coccyx is turned over; that an X-ray which he took showed a fracture of the lower end of the coccyx. He further stated that these palpations showed pains which involved involuntary muscle spasms, indicating an inflammatory condition in the region of the coccyx. Dr. Field then indicated that claimant should be re-examined, having in mind an operation to remove the coccyx.

Dr. Benjamin Cohen, testifying on behalf of respondent, stated that he examined claimant immediately after the accident, and ordered an X-ray, which showed a fracture of the fifth sacral segment, with slight anterior displacement of the distal fragment. He stated that claimant was in the hospital from August 23rd until September 11th when she was discharged with the recommendation that if she continued to have difficulty in the region of the coccyx, she could be sent to the Illinois Research Hospital for further examination, and possible surgery. He testified that claimant never asked for such examination, but that ten days prior to the hearing she asked him whether or not she needed surgery. He examined her at that time, told her she should return to work, but advised her not to do any heavy lifting. The hearing

was then continued to permit examination of claimant at the Illinois Research Hospital.

At the second hearing, which was held approximately five months after the first, claimant testified that she had been to the Illinois Research Hospital, was examined, and was told that an operation on her back was not advisable. She also testified that her back still ached, and her legs "still give me trouble". No further testimony was taken.

It is clear from the record that claimant sustained an injury to her back arising out of and in the course of her employment. From the medical testimony it also appears that claimant's alleged discomfort could be relieved by a comparatively simple operation. Claimant, although testifying that she was advised against such an operation, produced no medical testimony to indicate whether the operation would not in fact relieve the discomfort, or whether her condition was such that the operation was unnecessary.

Claimant seeks an award for total permanent disability. It is clear from the record, however, that she is not totally disabled; it is undisputed that she could and should return to her former employment, except that she should not attempt heavy lifting. No award can therefore be made for complete disability.

Nor can an award for partial incapacity be made. Section 8 (d) of the Workmen's Compensation Act of this State provides that compensation for partial incapacity shall be determined by the difference between the average amount which an employee earned before the accident, and the average amount which the employee is earning or is able to earn in some suitable employment or business after the accident. The record in this case shows only that claimant could return to her **work** at the Chicago State Hospital. The court can not guess whether

or not her salary would be more or less than that earned prior to the injury.

The record contains no evidence whatever of any injury to, or the loss of use of either of her legs. That allegation of the complaint is wholly unsupported. The claimant has failed to sustain the burden of proof imposed upon her by the Workmen's Compensation Act.

An award is, therefore, denied.

A. M. Rothbart, Court Reporting Service, has filed a claim for taking and transcribing **the** testimony in this case. The charges in the amount of \$28.00 are fair, reasonable, and customary. An award is, therefore, entered in favor of A. M. Rothbart Court Reporting Service, in the amount of \$28.00.

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(No. 3885 and No. 3886—Claim denied.)

**MILDRED ANN FORRESTER**, Claimant, *vs.* STATE OF ILLINOIS,  
Respondent.

*Opinion filed September 12, 1946.*

**J. W. KOUCKY**, Chicago, Illinois, attorney for claimant.

**GEORGE F. BARRETT**, Attorney General, for respondent ; **WILLIAM L. MORGAN**, Assistant Attorney General, of counsel.

**WORKMEN'S COMPENSATION ACT**—*Where claim for compensation for permanent partial disability to right hand of claimant will be denied.* Where compensation under the Workmen's Compensation Act is sought for permanent partial disability to right hand, the injury complained of must be proven by competent evidence of which there are or have been objective conditions or symptoms proven, not within the physical or mental control of the injured employee—otherwise the claim must be denied.

**SAME—burden of proof in claims under—is on claimant.** Where claimant failed to sustain her claim by competent evidence the same must be denied.

DAMRON, J.

On October 13, 1944 this claimant filed two complaints in this Court.

She alleges that she has had two accidents while in the course of her employment at the Chicago State Hospital, Chicago, Illinois. Both of the alleged injuries were to her right hand. Complaint No. 3885 avers that her right hand was injured on January 22, 1944.

Complaint No. 3886 avers that her right hand was again injured on September 7, 1944.

The evidence offered on behalf of claimant and respondent is so intermingled that we have elected to consolidate both complaints.

Claimant, testified on direct examination that on January 22, 1944 while attempting to make a patient arise from bed the patient attacked her causing her to fall, fracturing the third metacarpal bone of the middle finger of the right hand. As a result of this accident she lost four weeks employment, but was paid her full salary and furnished all necessary medical services. She further testified that this injury and the subsequent injury of September 7, 1946, which involves the same hand, has compelled her to write with her left hand instead of her right; that the finger felt tight and seemed to drag; that one of the knuckles of the hand was depressed and that the little finger does not extend as fully as it should and the third finger hurt her all the time; that prior to the accident her hand was normal.

Doctor Albert C. Fields, called on behalf of claimant, testified that he made an examination of the claimant on September 20, 1944 for the purpose of testifying. He testified that he took an X-ray film of claimant's right hand on the same day. This X-ray was introduced in evidence and read by this medical witness. He said it

shows a line in the third metacarpal bone which in his opinion was suggestive of bone injury. When asked if it was a fracture he answered.

"It is my opinion it is a fracture which is fairly well healed."

He was asked the following question.

Q. "Doctor, is this fracture causing this disability that you speak of?"

A. "The fracture plus the injury to the soft tissues the ligaments and the tendons and the joint spaces. It is more of a soft tissue injury than it is a fracture, because the fracture has healed."

In reply to a question he estimated the functional loss of use of claimant's right middle finger to be a certain percentage, to which the respondent objected. The question and answer was improper and the objection will be sustained. He further testified that claimant lacks about three-quarters of an inch of bringing the tip of the finger to the palm of her hand, but there was no swelling present at the time of his examination. He testified further that the condition that he found was permanent.

Doctor Benjamin Cohen was called as witness on behalf of the respondent who testified that on January 22, 1944 he examined claimant and she told him about having had an accident. He examined her right hand and ordered an X-ray which revealed a fracture. Another X-ray film was taken on his orders on February 15, 1944, a progress study, an X-ray film of the right hand revealed a proper healing of the third metacarpal bone. The above testimony was taken in Chicago on November 4, 1945.

On November 10, 1945 additional testimony was taken in Chicago in support of complaint No. 3886 under which an award is sought for temporary total disability and for loss or loss of use of her right hand under Paragraph (e) Section 8 of the Workmen's Compensation Act.

Doctor Albert C. Fields was called on behalf of claimant, who again referred to his examination of claimant's right hand on September 20, 1944 which was thirteen days subsequent to the alleged injury of September 7, 1944 which is now under consideration under Complaint No. 3886. He testified that he found she had suffered some loss of grip in her hand and some loss of strength due to muscular strain that he assumed was caused by the second injury.

Doctor Benjamin Cohen was called as a witness on behalf of the respondent who testified that on September 7, 1944 the claimant told him that a disturbed patient twisted the second finger of her right hand. He found some swelling and tenderness of the finger and an X-ray film taken at that time was negative for fracture. However, this claimant was referred to Doctor P. S. Procopie an orthopedic surgeon who made an examination on September 15, 1944 of claimant's right hand.

Doctor Procopie filed his findings of this examination which is as follows:

"Examination of the right hand doesn't show any laceration, deformity or abnormality. X-ray picture fails to show fracture or dislocation. Function of the right hand is normal. (100% normal.) DIAGNOSIS: Simple muscular strain. No disability." Signed Doctor P. S. Procopie.

We have carefully considered this record. Upon examination of the X-ray exhibit we find that it shows no bone pathology and the testimony of this claimant must be considered as subjective, and her complaints are not supported by the medical testimony offered on behalf of the respondent. Claims under the Workmen's Compensation Act must be proven by a preponderance of the evidence. Section 8, Paragraph (i-3) of the Act provides :

"That all compensation payments named and provided for in paragraphs (b), (c), (d), (e), and (f) of this section, shall mean and be

defined to be for injuries and only such injuries as are proven by competent evidence, of which there are or have been objective conditions or symptoms proven, not within the physical or mental control of the injured employee himself."

This Court has consistently followed this section of the Act in claims which have been brought before it. *Peck vs. State*, 10 C. C. R. 56; *Wasson vs. State*, 10 C. C. R. 57; *Musick vs. State*, 13 C. C. R. 34; *Nichols vs. State*, 13 C. C. R. 80.

The evidence in this record does not support her claim of permanent partial disability to her right hand. The claimant having failed to prove her claim, an award is therefore denied in complaint No. 3885 and in complaint No. 3886.

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(No. 3899—Claim denied.)

MAUDE CARLSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed September 12, 1946.*

JOSEPH W. KOUCKY, of Chicago, for claimant.

GEORGE F. BARRETT, Attorney General, and WILLIAM L. MORGAN, for respondent.

WORKMEN'S COMPENSATION ACT—*claim for temporary total disability, for total loss of use of both legs, and for partial permanent disability—failure of medical testimony to show loss due to injury—bars award.* Where claimant seeking compensation for partial permanent disability, fails to prove by a preponderance of the evidence that there is a causal connection between the accident and the condition or incapacity complained of, an award for such disability must be denied.

SAME—*burden of proof in claims under—is on claimant.* The burden of proof is on claimant in claims under the Workmen's Compensation Act. No award can be made based upon imagination, speculation or conjecture, but must be based upon facts established by a preponderance of the evidence.

ECKERT, C. J.

Claimant, Maude Carlson, filed her complaint on January 24, 1945, alleging that on February 18, 1944,

while employed by the respondent at the Chicago State Hospital, and while in the discharge of her duties, she, slipped and fell. She alleged that the fall resulted in an injury to her back and both legs. The complaint contains the necessary allegations as to notice to the respondent. It prays an award for temporary total disability, for total loss of use of both legs, and for partial permanent disability.

Within thirty days after the filing of the complaint, a report of the Department of Public Welfare, in which claimant had been employed, was filed, by the respondent. Subsequently, and at its November term, this court entered an order on claimant to show cause why the complaint should not be dismissed for want of prosecution. Thereafter, on December 6, 1945, hearing was had, and the transcript of testimony was filed on April 3, 1946.

From the report of the Department of Public Welfare, it appears that claimant entered the employ of the Chicago State Hospital in February, 1928; that an injury to claimant was reported to the Department as having occurred on February 8, 1944. A copy of the report of the injury, made by Dr. B. Cohen, Staff Physician of the Chicago State Hospital, to the Department of Public Welfare, under date of February 8, 1944, shows that claimant, on that date, while working in the general dining room of the Chicago State Hospital, accidentally slipped and fell, and that the fall resulted in "tenderness about left wrist" with "no treatment necessary." The injury was classified as trivial.

Claimant, testifying on her own behalf, testified in part as follows :

- "Q. You were working for the Chicago State Hospital in February, 1944; did anything unusual happen to you while working there at that time?
- A. Yes.

Q. Now, tell us when did this happen, this unusual occurrence?

A. The 18th of February, I do believe.

Q. You are not sure?"

A. Well, my dietician gave me the date, too, she has it down.

Q. What is the name of your dietician?

A. Miss Teller.

Q. Is she your head nurse?

A. She was then, but she is not there now."

She further testified, that while helping one of the patients, she slipped and fell, injuring her spine, her right foot at the ankle, and her left wrist; that she was sent to the hospital, where she was interviewed by Dr. Cohen; that she told Dr. Cohen that she had hurt her spine and her foot and her wrist; that Dr. Cohen examined her wrist and said, "I think you will be all right, Mrs. Carlson."; that he made no further examination; that she saw him two days later, at which time he examined her foot, and suggested she take diathermy treatments; that she took five such treatments, and saw Dr. Cohen each time, excepting once when he was not in the hospital.

Claimant also testified that during Dr. Coheii's absence another Doctor examined her foot; that he said, "My, my, you got a very serious blood clot in your foot"; that he ordered an X-ray taken; that after the X-ray was taken, the unnamed doctor ordered her to bed; that she stayed home the following Saturday and Sunday, returning to the hospital on Monday, and went to bed; that Dr. Cohen came to see her on Wednesday, examined her right leg, and ordered medication. On the following Friday, she testified, Dr. Cohen said she could go home, but should return to the hospital on Sunday; that when she went home her foot was paining her, and her husband insisted she see another doctor, also unnamed. She consulted this doctor only once, and testified that he said,

"Lady, you should be in bed. You have a very serious blood clot."

Claimant, however, returned to the hospital on Sunday, saw Dr. Cohen again on Wednesday, and remained in the hospital, under Dr. Cohen's care, for a period of twenty-one days.

During that period, she testified, another Doctor came to see her, also unnamed, who was said to be a blood clot specialist; that he told her, "Mrs. Carlson, I am going to try to get you well;" that he gave her shots in the arm and other medication; that at the end of the twenty-one days she went home, "because the doctor who said he would get me well, they would not let him in the hospital." She testified, however, that this same doctor had been called for her by the hospital, and that he was on the hospital staff. She testified that he said she had a sprained ankle, and wrapped her foot from the toes to the knees.

These wrappings were subsequently taken off by a Doctor Vaughan, whom claimant employed when she returned home at the end of the twenty-one day period. She testified that Dr. Vaughan wrapped both of her feet and legs in ice, and kept them in ice for nine weeks; that she remained in bed at home continuously for five months; that Dr. Vaughan came to see her every day "at first", and about twice a week after her condition improved.

Claimant testified that her right leg now "is very bad;" that "it just gives away on me and when I walk it don't bend in here;" that it is stiff in the ankle; that it swells when she walks on it, or when she stands on her feet all day. She stated that she wears a rubber stocking and when asked if she ever had any trouble with her right leg prior to this fall, stated; "I never did."

Upon further examination in regard to the date of the alleged injury, claimant again testified that she checked the date of the fall with her head nurse; that February 18th was the date given to her, and was the date which appeared in a record book kept by this nurse. The nurse, however, was not called as a witness, nor the record produced.

Dr. Albert C. Field, called as a witness on behalf of claimant, stated that he examined claimant on December **30, 1944**; that he found the movements of her back were fairly well performed; that after bending forward and assuming the erect position, there was some spasticity of the lumbar muscles; that claimant complained on manipulation on the lumbar region; that both legs were discolored, reddened in appearance; that there was evidence of a marked circulatory disturbance; and that claimant had a phlebitis in both legs, an inflammatory condition of the veins of the legs, and a thrombosis. He testified that such a condition could be caused by a fall, and when asked if it were permanent, stated that it might be "some improved, but it would be a long time in doing it." On cross-examination Dr. Field stated that he was testifying as to an injury supposed to have occurred on February **18, 1944**; that he knew nothing of the injury except that claimant fell and injured her right foot and back; that he knew nothing of an injury occurring on February 8th, **1944**.

Dr. Benjamin Cohen, called as a witness for the respondent, testified that on the 8th of February **1944**, he was a member of the staff of the Chicago State Hospital; that on that date he had a complaint that claimant had received an injury; that claimant told him she accidentally slipped and fell while working in the general dining room; that upon examination he found a tender-

ness about the left wrist; so trifling as to make treatment unnecessary. He stated he found no thrombosis, and no serious injury. He also testified that claimant had been a patient at the hospital on numerous occasions, both before and after the 8th of February, 1944; that she was hospitalized on March 4, 1944 for a period of twenty-one days; that she was treated by Dr. Ruess, a gynecologist, because at that time she complained of a generalized tenderness throughout her body, mostly her legs. On cross-examination, Dr. Cohen testified that from an examination on March 7th, he found a non pitting odema in claimant's legs which is generally due to a heart condition, but he found no indication of a thrombosis or phlebitis. He stated that claimant was very obese at the time of the alleged disability; that a thrombosis might be due to obesity because of the pressure on the veins, varicose veins being a prominent cause of phlebitis. On re-direct examination, Dr. Cohen stated that claimant made no complaint of an injury to her legs on February 8th.

The claimant was subsequently re-called, and testified that since her employment at Chicago State Hospital she had broken her left wrist, had injured her ribs, had had her gall bladder removed, had had one kidney removed, had broken her arm, and had had an emergency operation for appendicitis. Upon re-cross examination she testified that in January, 1944 she employed one Dr. Corbett as her physician. She could not recall the specific date in January, but stated that she knew "it was when Sonja Henie was here," about the middle of January; that she saw Dr. Corbett three times, having gone to him after the fall she sustained in the Stadium when she went to see Sonja Henie and fell down and bruised both knees.

From the record, it is clear that claimant has a bad

medical history; that she had a fall in January, 1944, serious enough to require medical treatment; that she fell while in the course of her employment on February 8th, 1944; that the only injury apparent on February 8th was an injury to her wrist. The record is conflicting as to whether or not there was a subsequent injury on the 18th of February, and as to the cause of the resulting disability. The testimony of the claimant is contradictory and wholly unsatisfactory.

Respondent's records show only the injury of February 8, 1944, an injury which the examining physician characterized as trivial. The testimony of the examining physician also clearly shows that a month later his examination did not disclose the condition' which claimant insists resulted from an injury, not on February 8th, but on February 18th, 1944. Neither the head nurse who was alleged to have a record of the date of the injury, nor Dr. Ruess, whom the records show was available, and who treated claimant at the Chicago State Hospital, nor Dr. Vaughan, whom she selected and employed, and who treated her at home after she left the hospital, was called by claimant as a witness. Instead she produced a physician who examined her almost a year after the alleged injury, and whose opinion and diagnosis in part was based on subjective symptoms.

'Claimant has the burden of proving the causal connection between the accident and the condition or incapacity which constitutes her claim for compensation. *Sanitary District v. Industrial Commission*, 343 Ill. 236; *Sears Roebuck & Company v. Industrial Commission*, 334 Ill. 246; *Mandell v. State*, 12 C. C. R. 29. Liability can not rest upon imagination, speculation or conjecture, but must be based upon facts established by a preponderance

of the evidence. *Springfield District Coal Company v. Industrial Commission*, 303 Ill. 528.

The court is of the opinion that claimant has not sustained her burden of proof; that any liability in this case would be based, not upon facts, but upon conjecture.

An award is therefore denied.

A. M. Rothbart Court Reporting Service, has filed a claim for taking and transcribing the testimony in this case. The charges in the amount of \$57.00 are fair, reasonable and customary. An award is therefore entered in favor of A. M. Rothbart Court Reporting Service in the amount of \$57.00.

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(No. 3919—Claim awarded \$1,340.65.)

DEAN TUMMEL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed September 12, 1946.*

DIXON, DEVINE, BRACKEN & DIXON, Dixon, Illinois, attorneys for claimant.

GEORGE F. BARRETT, Attorney General; WM. L. MORGAN, Assistant Attorney General, of counsel, for respondent.

*WORKMEN'S COMPENSATION ACT—attendant at Dixon State Hospital within provisions of—when award may be made under for temporary total liability and permanent partial loss of use of right hand.* Where attendant at Dixon State Hospital, in separating two patients engaged in a fight, was bitten by 'one of them on her right hand, resulting in temporary total disability and permanent partial loss of use of said hand, an award may be made for compensation therefor, in accordance with the provisions of the Act, upon compliance by said employee with the requirements thereof and proper proof of claims for same.

DAMRON, J. ◇

This is a claim for benefits under the Workmen's Compensation Act.

The evidence discloses that claimant was first em-

ployed by the respondent at the Dixon State Hospital, Dixon, Illinois, as an attendant, on September **29, 1941** and worked continuously for the respondent until the 17th day of August **1944**.

The evidence further discloses that on the last mentioned date, this claimant, in attempting to separate two patients at said hospital who were engaged in a fight, was bitten by one of the patients on her right hand. Claimant testified that her right hand had been burned from lye in **1925**, which left a scar on this hand but she had full functional use of it. The injury received by her on August **17, 1944** injured the scar tissue which was present due to the lye burn.

Considerable surgery was performed on claimant's right hand and skin was grafted thereto. She was hospitalized for a considerable length of time, due to this injury, from August **17, 1944** to January **1945**. She attempted to work during that month and did perform her duties as an attendant for four days when she again found she required hospitalization. She was unable to resume her employment thereafter until August **1, 1945** upon which day she resumed her employment for the respondent and continued thereafter until December **1945** when she was discharged from her employment by the respondent.

The amended report of the Department of Public Welfare discloses that claimant's annual wages for one year preceding this injury amounted to **\$1,364.81** and that the Department paid to the claimant, from the date of her injury until she resumed her employment, as temporary total compensation, the sum of **\$489.50**; this excludes the sum of **\$16.13** which was paid to claimant for salary for four days' employment during January **1945**.

The evidence discloses that at the time of claimant's injury she was a widow and had one child aged 9 years fully dependent upon her for support.

The medical testimony discloses that at the time the evidence was taken on May 28, 1946 claimant had suffered a 25% total permanent loss of use of her right hand due to said injury.

We calculate that from the date of the injury, August 17, 1944 until claimant was able to resume her employment was 49 weeks and 6 days. However, claimant reported for work in January 1945, worked for respondent four days during that month for which she was paid. She, therefore, is entitled to temporary total compensation for 49 weeks and 2 days and is also entitled to, be compensated for a 25% permanent loss of use of the injured hand.

Her annual wages being \$1,364.81, her average weekly wage would be \$26.24. Her weekly compensation rate, therefore, based on 17½% increase and a 5% increase for a dependent child, would be \$16.19. We find, therefore, that claimant is entitled to the sum of \$797.93 for temporary total compensation for 49 weeks and 2 days, from which must be deducted the sum of \$489.50 paid by respondent to claimant as temporary compensation during this period, leaving a balance due claimant for temporary total compensation in the sum of \$308.43; claimant having suffered a 25% permanent partial loss of use of her right hand would be entitled to 42½ weeks at \$16.19 or the sum of \$688.07, making a total amount due to claimant for temporary total and specific loss in the sum of \$996.50 as provided by Section 8 (Paragraphs e, j, l, and m) of the Act.

We further find from the evidence that all medical, hospital and surgical services have been furnished by

the respondent with the exception of the sum of \$344.15 which represents professional service rendered at the Murphy Clinic, Dixon, Illinois, for a series of surgeries of skin graftings, medications and dressings rendered to client by Dr. David L. Murphy of said Clinic, which amount we find to be fair and reasonable for the services performed.

An award is therefore entered in favor of claimant in the sum of Nine Hundred and Ninety-Six Dollars and Fifty Cents, (\$996.50) all accrued and payable in a lump sum to her and a further sum of Three Hundred Forty-Four Dollars and Fifteen Cents (\$344.15) for the use of Dr. David L. Murphy, making a total award of One Thousand Three Hundred and Forty Dollars and Sixty-Five cents (\$1,340.65).

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(No. 3932—Claim denied.)

WILLIAM W. STUENHEL, Claimant, vs. STATE OF ILLINOIS,  
Respondent.

*Opinion filed May 14, 1946.*

*Petition of claimant for rehearing denied September 14, 1946.*

H. C. STRAUSCHILD, for claimant.

GEORGE F. BARRETT, Attorney General, for respondent.

WM. L. MORGAN, Assistant Attorney General, of counsel.

**WORKMEN'S COMPENSATION ACT**—*making claim for and filing application for compensation within time fixed in Section 24 of, condition precedent to the right to maintain proceedings under.* Where no compensable time was lost, and no temporary compensation was due or paid claimant under the Act, and no application for the same is filed within time fixed therein, court is without jurisdiction to proceed with hearing on claim filed thereafter and the same must be denied.

## DAMRON, J.

This complaint was filed on the 26th day of September 1945, seeking an award under the provisions of the Workmen's Compensation Act. On October 4, 1945, the respondent, through its Attorney General, filed a motion to dismiss the complaint, based on the premise that it appeared on the face of said complaint that the cause of action was barred by the statute of limitations. Before the motion to dismiss had been passed upon by this Court, the claimant, by authority of Rule 14 of this Court, filed an amended complaint on October 27, 1945, which complied with the rules of this Court and cured the objection raised by the respondent in reference to the statute of limitations. This Court, at the November 1945 term, denied the motion of the Attorney General to dismiss this claim.

The record as completed, now consists of the following: complaint, motion of respondent to dismiss, the statement, brief, and argument, notice to call up motion to dismiss, motion of claimant to dismiss or overrule respondent's motion to dismiss, amendment to complaint, opinion of this Court denying motion to dismiss the complaint, evidence on behalf of claimant and waiver of brief and argument of both claimant and respondent.

On February 27, 1946 the evidence was taken of claimant in support of the amended complaint. At that time, a stipulation was entered into by and between the parties which is in words and figures as follows:

"We can agree that William W. Stuenkel was employed by the Division of Highways on July 5, 1944 as a section foreman; that on that date an accident and injury occurred; that the Division of Highways and the employee are operating subject to the Workmen's Compensation Act; that notice and demand were made as provided by the Workmen's Compensation Act; that the petition herein was filed within two years of the date of the accident as provided by law; that his salary, exclusive of overtime, for the preceding year was \$1,170.85;

that the Claimant was forty-five years old at the time of the accident, was married and had no children under the age of sixteen dependent on him for support.

It is also stipulated by and between the parties hereto that the departmental report shall stand as the evidence of the respondent in this case."

It is to be noted that the original complaint in this case was filed by claimant on September 26, 1945 and the amendment to the complaint was filed on October 27, 1945. The amendment to the complaint alleges, "that during said time claimant attempted to perform his duties and during part of said time he was not able to perform his duties and for the remainder of said four months he was not able to fully perform his duties because of the condition of his hand ; that during said time; with knowledge of claimant's injury and without denial of liability, claimant was paid his full salary which said payments claimant regarded as compensation for his injury."

During the course of examination of claimant, the following questions were propounded to him on direct examination :

"Q—You returned to work right after the accident?

A—That is correct.

Q—You kept on working?

A—That is correct.

Q—Did you do your usual work?

A—I did my usual work but not as well as I could do it before."

On cross examination the following questions were propounded to claimant:

"Q—During all that time you received your full pay?

A—That is also correct."

Section 8, paragraph D of "An Act to create the Court of Claims and to prescribe its powers and duties," approved July 17, 1945, provides:

"All claims against the State for personal injuries or death arising out of and in the course of the employment of any State employee and all claims against the Board of Trustees of the University of Illinois for personal injuries or death suffered in the course of, and arising out of the employment by the Board of Trustees of the University, the determination of which shall be in accordance with the substantive provisions of the Workmen's Compensation Act or the Workmen's Occupational Diseases Act, as the case may be."

Section 24 of the Workmen's Compensation Act provides :

"\* \* \* provided, no proceedings for compensation under this Act shall be maintained unless claim for compensation has been made within six months after the accident, provided, that in any case, unless application for compensation is filed with the industrial commission within one year after the date of the accident, where no compensation has been paid, or within one year after the date of the last payment of compensation, where any has been paid, the right to file such application shall be barred; \* \* \*"

This Court has no jurisdiction to hear and determine a claim under the Workmen's Compensation Act where the claimant has failed to comply with the limitations of time of Section 24 of said Act: *Henderson vs. State*, 12 C. C. R. 3; *Boismenu vs. State*, 12 C. C. R. 36; *Chiara vs. State*, 12 C. C. R. 41; *Koleita vs. State*, 12 C. C. R. 217; *Roebuck vs. State*, 12 C. C. R. 236; *Scott vs. State*, 13 C. C. R. 163.

The above cases cited were rendered by this Court under Section 6 of the former Act of the General Assembly which was approved June 25, 1917 and repealed on June 17, 1945. Rule 6 provided as follows:

"To hear and determine the liability of the State for accidental injuries or death suffered in the course of employment by any employee of the State, such determination to be made in accordance with the rules prescribed in the Act commonly called the "Workmen's Compensation Act," the Industrial Commission being hereby relieved of any duty relative thereto."

It has also been repeatedly held by the Illinois Supreme Court that compliance with the provisions of

Section 24 of the Compensation Act is a condition precedent to the right to maintain proceedings under the Compensation Act. *City of Rochelle vs. Industrial Commission*, 332 Ill. 386; *Inland Rubber Company vs. Industrial Commission*, 309 Ill. 43; *Simpson vs. State*, 10 C. C. R. 394; *Baker vs. State*, 10 C. C. R. 111.

It was not the intention of the Legislature when the Court of Claims Act was passed and approved, July 17, 1945, to modify or amend the Workmen's Compensation Act and we hold that Section 8, paragraph D of the Court of Claims Act is to be read in conjunction with Section 24 of the Illinois Workmen's Compensation Act and a claimant is required to follow the substantive provisions of the Act to confer jurisdiction on this Court to hear and determine the claim.

The evidence shows that this claimant was injured on July 5, 1944; that claimant lost no compensable time from the date of injury until the filing of the original complaint in this case and therefore no temporary compensation was due or paid to him by the respondent.

The original complaint was filed with the Clerk of this Court on the 26th day of September 1945, more than one year subsequent to the accidental injury sustained by claimant.

This claimant having failed to comply with the provisions of Section 24 of the Act, his claim must be denied.

Claim dismissed.

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(No. 3933—Claimant awarded \$4,285.29.)

DR. CHARLES AHRONHEIM, Claimant, vs. STATE OF ILLINOIS,  
Respondent.

*Opinion filed September 12, 1946.*

PAUL C. ROSS and FRANK M. MARTOCCIO, of Chicago,  
for claimant.

GEORGE F. BARRETT, Attorney General, and WILLIAM L. MORGAN, for respondent.

**WORKMEN'S COMPENSATION ACT**--*doctor employed at Elgin State Hospital within provisions of—when award may be made for temporary total disability and permanent and complete loss of use of right arm.* Where a doctor employed at Elgin State Hospital, sustains accidental injuries, arising out of, and in the course of his employment, resulting in temporary total disability and permanent loss of the use of his right arm, an award may be made for compensation therefor, in accordance with the provisions of the Act, upon compliance by said employee with the requirements thereof and proper proof of claim for same.

ECKERT, C. J.

On December 18th, 1944, claimant, Dr. Charles Ahronheim, while in the employ of the respondent at the Elgin State Hospital fell on a slippery side walk on the hospital grounds and injured his right shoulder and back. The injury caused pain in claimant's back, and grew increasingly worse until the 10th of January, 1945, when claimant reported to Dr. Green of the Hospital Staff, who put claimant's right arm in a sling. The report made at that time to the Department of Public Welfare classified the injury as serious and described it as: "small area of swelling at anterior edge of the right deltoid muscle, nutritional disturbance of the right 4th and 5th finger nails."

Claimant's arm remained in a sling until some time in July or August, without improvement. Diathermy treatments, in the meantime, were given to claimant at the Sherman Hospital in Elgin, and claimant was hospitalized at the Elgin State Hospital for eight days under the care of Dr. Green, Dr. Reid and Dr. Leibert. Claimant left the employ of the respondent on the first of May, 1945.

The report of the attending physician, made to the Department, indicates that the condition of claimant's shoulder had not improved when he was last examined

by Dr. Green on April 30th, **1945**, and the prognosis was that the condition might become chronic.

After claimant left the Elgin State Hospital, he continued to consult various doctors in the hope of obtaining relief, but without success. The services of these various physicians were all secured at claimant's own election. At the time of the hearing, on October **29, 1945**, the pain in claimant's shoulder had not lessened, and he testified that it was alleviated only by the use of sedatives and hypnotics. His postero-lateral abduction was restricted, and he was unable to close or make a fist. He testified that the fingers of the right hand were partially numb, as if they were covered with silk, and stated, that in his work as a physician, his right hand and arm are entirely useless.

Dr. George Green, the attending physician, testified that he had no knowledge as to the fall which occasioned the injury, but stated that the condition now existing, as described by the claimant, might be a result of an injury such as claimant stated he received. Dr. Green, just prior to the hearing, found claimant unable to lift his right arm anteriorly above the level of the shoulder; found claimant limited as to lateral abduction; found claimant unable to place his right hand behind his back; found claimant had atrophic changes of the finger nail of the right fourth finger, and the ring finger; and found a small lump at the anterior border of the right deltoid muscle near its insertion on the humerus. Dr. Green stated that it was unlikely that such a condition would occur from anything other than an injury. He considered the condition chronic.

Dr. S. I. Weiner testified that he examined the claimant on October **29, 1945**, at which time he took an X-ray of both claimant's shoulders. These X-rays were ad

mitted in evidence, and show claimant's left shoulder perfectly normal, but show, as to the right shoulder, calcification around the margin of the glenoid fauca of the scapula, and calcifications over the greater tubercle of the head of the humerus, and streaks of calcification across the heads of the humerus proper.

Dr. Weiner also testified that he had made a medical examination of claimant which disclosed an atrophy of the right upper extremity, localized tenderness from the angle of the shoulder and over the anterior part of the shoulder and the region of the coracoid process of the scapula. His diagnosis was traumatic periarthrititis of the right shoulder, and he stated that it was definitely of a traumatic nature because it is confined to the peri-articular structures and not to the articular structure. Dr. Weiner stated that in his opinion the condition is permanent, and that there is a total functional loss of use of claimant's right arm.

At the time of the injury, the employer and employee were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course of claimant's employment. During the year immediately preceding the injury, claimant's salary totaled \$2,760.00. Claimant, although unable to work from January 10, 1945, to May 1, 1945, received his full salary in the amount of \$899.33.

Claimant's average weekly wage was \$53.07, and his compensation rate is therefore \$17.63. The court is of the opinion that he is entitled to an award for temporary total disability for a period of 15 5/7 weeks, or the sum of \$277.04.

The court is also of the opinion that claimant has

suffered a complete loss of use of his right arm. He is therefore entitled to an award, for such loss of use, of \$17.63 per week for a period of 225 weeks, or the sum-of \$3,966.75.

A. M. Rothbart Court Reporting Service is entitled to payment of \$41.50 for reporting the testimony at the hearing.

No award can be made for medical expenditures, since claimant elected to secure these services at his own expense.

An award is therefore entered in the total sum of \$4,285.29, from which must be deducted moneys paid to the claimant by respondent during the period of January 10, 1945, to May 1, 1945, being the sum of \$899.33, leaving a balance of \$3,385.96, payable as follows.:

a) the sum of \$41.50 to A. M. Rothbart Court Reporting Service, forthwith.

b) the sum of \$1,256.77 to claimant, forthwith.

c) the sum of \$2,087.69 to claimant in weekly installments, beginning on the 12th day of September, A. D. 1946, at the rate of \$17.63 per week for a period of one hundred and eighteen weeks, with an additional final payment of \$7.35.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

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(No. 3939—Claimant awarded \$2,615.66.)

HARRIETTE E. BAILEY, Claimant, vs. STATE OF ILLINOIS,  
Respondent.

*Opinion filed September 12, 1946.*

WHITE & INGRAM, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

**INHERITANCE TAX**—*when an award for refund of inheritance tax erroneously paid to State Treasurer—may be made—Inheritance Tax Act—Section 10.* Where it appears that an inheritance tax was paid on intestate estate and that subsequently and about ten years later a Will of the decedent was found and probated, which contained substantial bequests to charity with resulting changes and savings in the inheritance tax and where it further appears that claimant was not guilty of laches or lack of diligence but did immediately file his claim in apt time under the general Statute of Limitations applicable to claims filed in the Court of Claims, an award for refund of said inheritance tax erroneously paid to the State Treasurer, is justified.

**SAME—Jurisdiction—Court of Claims**—has **no** jurisdiction 'to hear or determine claims for which there exists a remedy in courts of general jurisdiction—but will assume jurisdiction when such other remedies cease to exist and where claim is filed in apt time under the general Statute of Limitations applicable to claims filed in Court of Claims. Where the County Court, because of the lapse of ten years, was without jurisdiction to correct the error inadvertently made, and was without jurisdiction to modify the order and assessment—it was proper to file a claim for refund of inheritance taxes erroneously paid, in the Court of Claims.

**SAME—Construction—Inheritance Tax Act—Section 10**—The two year period of limitations affects only the time of applying for refund from the State Treasurer—it does not commence to run until the party to be barred has had a right to invoke the aid of a court to enforce his remedy. The decisions of this Court construing the limitations of Section 10 of the Act, establish a precedent for the allowance of a refund for inheritance tax erroneously paid to the State Treasurer when filed in apt time.

**ECKERT, C. J.**

On September 14, 1934, Elizabeth Ginn died a resident of Moultrie County, Illinois. Her estate was administered as an intestate estate in the County Court of Moultrie County. The final report of the administrator was filed on September 23, 1935; and an order was entered by the court approving the report and directing distribution of the assets of the estate to Harriette E. Bailey, as niece and sole heir of the decedent.

On January 2, 1935, during course of administration, the administrator filed an inheritance tax return in the County Court of Moultrie County, and on February 6,

1935, after due notice, an order was entered by the court assessing an inheritance tax upon a net estate of \$52,-283.18. A total tax in the amount of \$3,742.65 was assessed against Harriette E. Bailey, and this amount was paid from the estate to the County Treasurer of Moultrie County on February 13, 1935.

On August 10, 1945, a conservator appointed for one Ella R. Harbaugh, the widow of Frank Harbaugh, formerly an attorney at Sullivan, Illinois, found in the possession of Mrs. Harbaugh a will of Elizabeth Ginn, which had been drawn by Frank Harbaugh in his lifetime. The will made charitable bequests, which it is conceded are not subject to an inheritance tax, totaling \$33,000.00. On August 18, 1945, the will, together with a petition for probate by the Trustees of the Methodist Church of Sullivan, one of the charitable beneficiaries, was filed in the County Court of Moultrie County. On September 17, 1945, Harriette E. Bailey entered her appearance in the probate proceedings, filed her answer to the petition, and consented to an immediate hearing. An order was thereupon entered admitting the will to probate, and directing that no letters be issued because Harriette E. Bailey had paid the full amount of the bequests, and all costs and expenses of the probate proceedings.

Because of the subsequently discovered will containing the charitable bequests, the inheritance tax paid by the administrator of the estate of Elizabeth Ginn, deceased, and which was deducted from the residue distributed to Harriette E. Bailey, was excessive in the aggregate amount of \$2,615.66. The claimant, Harriette E. Bailey, now seeks a refund of such excess from the State of Illinois.

Section 10 of "An Act to tax gifts, legacies, inheritances, transfers, appointments and interests in certain

cases, and to provide for the collection of the same, and repealing certain Acts therein named," (approved June 14, 1909), as subsequently amended, provides as follows :

"When it appears that errors have inadvertently occurred in the inheritance tax proceedings resulting in an erroneous amount of tax paid to the State Treasurer, such errors may be corrected and the order of assessment modified accordingly in a proper proceeding, and the executor, administrator or trustee, person or persons, corporation or corporations, who have paid such tax in error, shall be entitled to a refund from the State Treasurer of the amount of such tax erroneously paid: *Provided*, that this section shall not apply to any errors in the valuations of the property of the decedent as appraised, or in the rules of law applied in determining the taxability of the several successions: *Provided*, that all applications for the repayment of any tax under this section shall be made within two years from the date of such payment."

The error which occurred in the inheritance tax proceedings in the Elizabeth Ginn estate was clearly inadvertent, without fault on the part of the claimant, or any interested party, and resulted in the payment of an erroneous amount of tax to the State Treasurer. Under this section of the statute, such an error may be corrected, and the order of assessment modified accordingly in a proper proceeding, and the person who has paid such tax in error is entitled to a refund from the State Treasurer in the amount of the tax erroneously paid.

This court has consistently held that it has no jurisdiction to hear and determine claims for which there exists a remedy in courts of general jurisdiction. (*Farm Bureau Oil Co. Inc. v. State of Illinois*, 14 C. C. R. 153.) But Section 10 provides that all applications for repayment under that section must be made within two years from the date of payment. It was manifestly impossible for this claimant to make application for refund within the statutory period. The County Court of Moultrie County, after the lapse of more than ten years, was without jurisdiction to correct the error inadvertently made, and was without jurisdiction to modify the order

and assessment. The State Treasurer, likewise, no longer had any authority to consider an application for refund. Since no remedy existed in courts of general jurisdiction, the claim was properly filed in this court, and since it originated when the will of Elizabeth Ginn was probated, it was filed in apt time under the general statute of limitations applicable to claims filed in the Court of Claims.

The only objection which can seriously be urged is that since the claim arises under Section 10, and since two years have elapsed from the date of the payment of the tax, claimant is also barred from claiming a refund in this court.

Although this precise question has not previously been determined, there are numerous cases in which this court has made awards for refunds of inheritance taxes. Prior to the **1933** amendments to the Inheritance Tax Act, it was customary to make application for refunds under Sections 8, 10, and 25 of the Act in the Court of Claims. The application was made directly to this court because there were no provisions in the Act for re-determination of the tax in the County Court. And prior to the **1933** amendment, Section 10 was the only section providing for refunds which contained a time limitation.

Section 10 of the Act, prior to the **1933** amendment, provided :

“When any amount of said tax shall have been paid erroneously to the State Treasurer, it shall be lawful for him, on satisfactory proof rendered to him by said County Treasurer of said erroneous payments, to refund and pay to the executor, administrator or trustee, person or persons who have paid any such tax in error, the amount of such tax so paid: *Provided*, that all applications for the re-payment of said tax shall be made within two years from the date of said payment.”

This section of the Act was considered by this court in numerous cases. In *Griffith v. State of Illinois*, 2 C. C. R. 128, at page **131**, the court said:

"The difficulty encountered in this regard, however, is the requirement of said section ten, that application for repayment must be made within two years from the date of payment. In this case, payment was made to the county treasurer, April 26, 1907, and the two years' limitation therefor had run April 26, 1909. The evidence further shows, that neither during that period, nor afterward, was any application made to the State Treasurer for repayment, either by the county treasurer of Cook County, or the claimant, and the question therefore arises, whether claimant is barred of recovery in this cause by limitation.

"Section ten, referred to above, is somewhat vague and uncertain as to the manner in which application for repayment is to be made, or as to the person by whom or to whom such application is to be made. As conditions precedent to repayment, two incidents are to concur: First, the county treasurer is to render to the State Treasurer satisfactory proof of the erroneous payment and, secondly, an application is to be made for repayment, but whether application is to be made by the payer to the county treasurer, by the payer to the State Treasurer, or by the payer to the county treasurer and then by the county treasurer to the State Treasurer, is not at all evident from the context.

"It would seem to be the most natural method, however, for the person who had erroneously paid the tax to the county treasurer, to apply for repayment to the very same officer to whom payment in the first instance was made, and that the county treasurer, who is presumed to have paid this erroneous tax to the State Treasurer, would thereupon make proof of the erroneous payment to said State Treasurer and the latter officer then make repayment.

"Again, under section ten referred to, repayment is to be made by the State Treasurer upon satisfactory proof being made to him, by the county treasurer, of the erroneous payment. It is unlikely that the county treasurer would render such proof, unless application were first made to him for repayment by the party erroneously paying the tax, notice of the erroneous payment being thus brought to his attention, and it is not unreasonable to suppose that this is the application which is intended should be made within the two years period.

"There is no definite direction in section ten as to this matter of application, and there is nothing in the section to indicate that the application is to be accompanied by any formality. In this case, at the time the tax was paid, claimant expressed protest by endorsing the same on the check. This protest was followed by an appeal by the claimant, from the order of the county judge, fixing this tax and by the time the county court rendered its opinion that part of the tax was illegal, the limitation had run. There was no laches or lack of diligence on the part of claimant. She was protesting against the payment all the time and was seeking relief from the same by the only legal remedy at hand, following her remedy to the Supreme Court of the State. Her acts and conduct in the matter constituted a constructive application of the very strongest kind and was of a continuing character."

An award for the excess tax was made.

Section 10 of the act was again considered in the case of *Weller and Klick v. State of Illinois*, 3 C. C. R. 2. In that case, one George Weller, on January 4, 1898, conveyed a life estate in land to Henry Lorenz by deed, with remainder in the child or children of Katherine Lorenz, daughter of the grantor and wife of the grantee, the grantor reserving to himself, however, the possession and use of the real estate during his lifetime. On March 30, 1910, George Weller died testate, leaving Mina Lorenz, the daughter of Katherine Lorenz, as his only heir. His will devised a life estate in the same property to Mina Loreiiz and Lillie Lorenz, and the claimants, Weller and Klick, were appointed trustees of the estate of Mina Lorenz and Lillie Lorenz. Lillie Lorenz, however, died before the testator, leaving Mina Lorenz as the sole devisee. Inheritance tax proceedings were had, and tax paid, in accordance with the will, on the beneficial interest of Mina Lorenz. The tax was paid to the County Treasurer on September 22, 1910, and subsequently paid by him to the State Treasurer.

On June 10, 1912, the claimants, Weller and Klick, as trustees, filed their report in the Circuit Court of Logan County. Mina Lorenz filed objections, claiming that \$188.09 of the tax paid had been erroneously paid, in that it was an assessment against property taken by her under the deed, and denying that her title was a life estate under the will. The Circuit Court over-ruled the objections, but upon appeal to the Supreme Court, at the April, 1915 term, it was held that \$188.09 of the inheritance tax paid by the testamentary trustees had been erroneously assessed against the beneficial interest of Mina Lorenz, and erroneously paid to the County Treasurer. Thereafter, the claimants revised their report in

accordance with the order of the Supreme Court, and made application to the State Treasurer for a refund, which was refused.

Claim was then filed in this court, and the claimants argued that the two-year statute of limitation contained in Section 10 of the Inheritance Tax Act was not a bar because the statute did not begin to run until the date of the final determination by the Supreme Court in 1915. This court, in its opinion, pointed out that the claimants had acted in good faith, and had followed the advice of counsel in the payment of the inheritance tax. On page 3, the court said:

" . . . It is a rule of statutory construction that a statute of limitations shall be strictly construed, and it has been further said as in *Stanninger v. Taber*, 103 Ill. App. 133, 'The statute of limitations affects only the remedy, and does not commence to run until the parties to be barred have a right to invoke the aid of the court to enforce their remedy.'

"The Supreme Court found in 1915, that this tax was erroneously paid. Previous to that time claimants were of the belief that it had been properly paid, and in this belief they were supported by the advice of their counsel as well as the findings of the Circuit Court. After the entering of the judgment of the Circuit Court, wherein it was found that the tax had been properly paid, claimants certainly could not have asked for a refund and it was not until the Supreme Court in April of 1915 found that the tax had been erroneously paid, that they could possibly have filed this claim."

The court held that the limitation clause of Section 10 was not applicable, and entered an award for a refund.

Section 10 of the Inheritance Tax law was again considered by this court in the case of *Moore & State*, 4 C. C. R. 1. James Hobart Moore died testate on July 18, 1916, a resident of Wisconsin. Letters Testamentary were issued in Wisconsin to Lora Moore, and no administration was had in Illinois. On October 18, 1916, the County Judge of Cook County assessed an inheritance tax in the amount of \$19,773.00, which was paid by the executor to

the County Treasurer of Cook County in November, 1916. Thereafter, on September 5, 1918, on hearing on petition, the acting County Judge of Cook County entered a decree finding that the order of the County Judge of Cook County, entered on October 18, 1916, was in error in the assessment of an inheritance tax upon the transfer of stock of foreign corporations passing to non-resident beneficiaries, and that the total tax assessable in said estate was \$6,307.56. On November 26, 1918, the executor filed in the Court of Claims a claim for refund of \$12,-438.79. The respondent contended that the 'claim was barred by the two-year statute of limitations in Section 10. This contention was not sustained by the court. On page 3 of the opinion, it was said: "The two-years' limitation mentioned in section 10 aforesaid does not affect the right of recovery in this case in this court. It only limits the time of applying for refund from State Treasurer." The court held that the amount claimed had been erroneously assessed as an inheritance tax and constituted a valid claim against the State. An award was entered.

In the case of *Union Trust Company v. State*, 6 C. C. R. 254, the executors of an estate, on July 31, 1920, paid to the County Treasurer of Cook County the amount of inheritance tax fixed by the County Judge on an appraiser's report, less the discount provided by statute. The appraiser had made an error in his computations, which was not discovered until 1928. Notwithstanding the lapse of time, this court entered an award for the difference between the tax which had been paid and the tax properly and correctly computed.

The same result was reached in the case of *Marchand, et al, v. State*, 10 C. C. R. 691. The claimants in that case were the heirs of one Edward Armstrong, who died

December 12, 1922, a resident of Adams County, Illinois. An administrator was appointed for his estate, inheritance tax proceedings were had, and a tax of \$212.11 was assessed on the theory that the net estate escheated to the County of Adams. On April 17, 1924, the administrator paid the tax to the County Treasurer of Adams County, who in turn remitted to the State Treasurer in accordance with the statute. In 1936, the claimants first learned of the death of Edward, Armstrong, and after a hearing in the County Court of Adams County, an order was entered establishing claimants as his heirs. Despite the time limitation of Section 10 of the statute, which had then been amended and was in its present form, this court held that the claimants, being non-residents, and not knowing of the original assessment, nor of the estate, until 1936, were entitled to a return of the excess tax paid to the State.

. The decisions of this court, construing the limitation provision of Section 10 of the Act, thus establish a precedent for the allowance of a refund in a case such as this. They are based on several theories: (1) that there was no laches or lack of diligence on the part of the claimant; (2) that a statute of limitations, being always strictly construed, does not commence to run until the party to be barred has had a right to invoke the aid of a court to enforce his remedy; and (3) that the two-year period of limitation in Section 10 affects only the time of applying for refund from the State Treasurer.

Applying these principles to the instant case, the court is of the opinion that the provision of Section 10 requiring applications for repayment to be made within two years from the date of payment does not bar claimant's recovery in this court.

An award is therefore entered in favor of the claimant in the amount of \$2,615.66.

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(No. 3956—Claimant awarded \$1,482.00.)

HARRIET I. SMITH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed September 12, 1946.*

ROY A. PTACIN and JOSEPH W. KOUCKP, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*employee at Chicago State Hospital within provision of—when an award—for compensation for temporary total and fifty percent permanent loss of use of right hand is justified under.* Where an attendant at Chicago State Hospital sustains accidental injuries, arising out of, and in the course of her employment, resulting in temporary total disability and partial loss of use of right hand, an award may be made for compensation therefor in accordance with the provisions of the Act, upon compliance by the employee with the terms thereof, and proper proof of claim for same.

ECKERT, C. J.

On December 24, 1945, the claimant, Harriet I. Smith, an employee of the respondent at the Chicago State Hospital, slipped on an icy sidewalk on the hospital grounds and fractured her right wrist. She was hospitalized at the institution from December 24, 1945, to January 21, 1946. She returned to work on February 17, 1946.

At the time of the accident, the employer and employee were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course of claimant's employment.

Claimant's earnings for the year preceding the accident were \$1,587.26, making an average weekly wage of

\$30.52. Her compensation rate is therefore the maximum of \$15.00, increased twenty per cent, since the injury occurred after July 1, 1945, or \$18.00. Claimant was totally incapacitated for a period of eight weeks, and is entitled to an award in the amount of \$144.00 for temporary total compensation. Claimant, however, was paid \$217.50 for non-productive time, making an over-payment of \$73.50. All medical and hospital services were furnished by the respondent.

Claimant, testifying on her own behalf, stated that since the injury she has a bump on the top of her right wrist, a numbness in several fingers of the right hand, an inability to close the right fist, and that her hand is twisted inward.

Dr. Benjamin Cohen, called on behalf of claimant, stated that an x-ray taken on December 26, 1945, shows an impacted colles fracture of the right wrist. Dr. Cohen, from examination of claimant's arm, stated that the injury was permanent, and that she has sustained a definite loss of use of the right hand as a result of the injury.

Dr. Albert C. Field, testifying on behalf of claimant, stated that he examined claimant on April 23, 1946, and made an x-ray of her right wrist and hand. He found the hand held in a somewhat silver-forked deformity, with a shortening of the radius and a prominence of the lower end of the ulna. He testified that all movements of the fingers of claimant's right hand were somewhat restricted, and on active motion she lacked about three-fourths of an inch of bringing the middle and ring fingers to the palm of the hand. He found flexion of the wrist limited about forty-five degrees, extension about forty-five degrees; supination about one-half of her normal range, and pronation within normal limits. The x-ray

taken by Dr. Field was introduced in evidence and forms a part of the record. He was of the opinion that 'claimant had suffered a permanent loss of the use of her right hand..

The testimony was heard by Commissioner John L. East, Jr., who recommends an award of fifty per cent permanent loss of use of claimant's right hand. The Commissioner's recommendation is fully supported by the evidence and the x-ray. Claimant, therefore, is entitled to an award for fifty per cent permanent loss of use of her right hand, or \$18.00 per week for a period of eighty-five weeks, a total of \$1,530.00. From this amount must be deducted the over-payment on account of temporary total disability of \$73.50, leaving a balance due claimant of \$1,456.50.

A. M. Rothbart Court Reporting Service is entitled to payment of \$25.50 for reporting the testimony at the hearing.

An award is therefore entered in the total sum of \$1,482.00, payable as follows :

- a) the sum of \$25.50 to A. M. Rothbart Court Reporting Service, forthwith.
- b) the sum of \$529.71 to claimant, forthwith.
- c) the sum of \$926.79 to claimant in weekly installments, beginning on the 12th day of September, A. D. 1946, at the rate of \$18.00 per week for a period of fifty-one weeks, with an additional final payment of \$8.79.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees.)'

(No. 3957—Claimant awarded \$68.09.)

THE TEXAS COMPANY, A DELAWARE CORPORATION, Claimant, *vs.*  
STATE OF ILLINOIS, Respondent.

*Opinion filed September 12, 1946.*

HAROLD K. NORTON and EDWARD R. CULLEN, Chicago,  
Illinois, attorneys for claimant.

GEORGE F. BARRETT, Attorney General, for respondent; C. ARTHUR NEBEL, Assistant Attorney General, of counsel.

SUPPLIES—*lapse of appropriation out of which could be paid before presentment of bill—sufficient unexpended balance in appropriation—when award for value may be made.* Where it clearly appears that claimant furnished supplies or rendered services to the State, for which an appropriation existed out of which payment could have been made therefor, an award may be made for reimbursement or payment for said supplies or services where such appropriation lapsed before payment was made for same, and sufficient unexpended balance therefor remains therein, on claim filed in reasonable time.

DAMRON, J.

The claimant is a foreign corporation duly authorized to engage in business in this State. An award in the amount of \$68.09 is sought for goods sold and delivered to the respondent by the claimant.

The record consists of the complaint, bill of particulars, report of the Division of Highways, and the waiver, statement, brief, and argument by the claimant and respondent.

The record discloses that the claimant, through its agents, furnished the respondent with gasoline, kerosene, liquid fuels, oils, and lubricants.

The report of the Division of Highways acknowledges that the claimant, through its several agencies, made 22 deliveries of products for which it has not been paid. The Division of Highways, of the Depart-

ment of Public Works and Buildings, made 17 purchases ; the Division of State Police, of the Department of Public Safety, made 3 purchases ; the Division of Waterways, of the Department of Public Works and Buildings, made 1 purchase, and the Department of Conservation made 1 purchase, as set out in claimant's bill of particulars attached to said complaint and made a part thereof.

- The report further shows that each department or division, above referred to, has confirmed that the purchases assigned to it, as shown on said bill of particulars, were made ; the material used in department or division equipment ; that the amounts of the charges are correct ; that the volume of material is correct ; and as of June 30, **1945**, appropriations were in existence and funds available in them for the payment of said materials had the invoices covering them been presented for payment within the allotted time.

The court finds from the record that the above named claimant furnished supplies for the respondent, the purchase of which was properly and duly authorized ; claimant submitted its invoices to the respondent within a reasonable time and has not received payment ; such non-payment is due to no fault on the part of the claimant ; when the charges were incurred there remained a sufficient unexpended balance in the appropriation from which payments could have been made. Claimant is therefore entitled to this award. *Phillips Petroleum Company vs. State*, **14 C. C. R. 44**.

An award is therefore entered in favor of the claimant in the sum of Sixty-Eight Dollars and Nine Cents (\$68.09).

(No. 3412—Claim denied.)

RAYMOND RUDDY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed November 12, 1946.*

M. W. STEFANICH, attorney for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, of counsel for respondent.

**WORKMEN'S COMPENSATION ACT—burden of proof in claims under— is on claimant—when evidence insufficient to sustain claim for compensation under.** The general-rule of law is that the burden of proof is upon the claimant to prove his case by a preponderance or greater weight of the evidence and where the only evidence in support of claim for temporary total disability is the unsupported testimony of the claimant—it is insufficient to justify an award.

**SAME—same—same.** No award can be made for compensation under the Workmen's Compensation Act where the same is based upon imagination, speculation or conjecture or upon a choice between two views equally compatible with the evidence;—it must arise out of facts established by a preponderance of the evidence.

**DAMRON, J.**

This claimant seeks an award for temporary total compensation from July 1, 1939 to October 30, 1940 in the sum of \$2,188.00 plus \$55.50 alleged to have been expended by claimant for trips to Chicago, Illinois for medical attention and for medicinal purchases.

Claimant testified that, while employed as a guard at the Pontiac Branch of the Illinois State Penitentiary, on March 25, 1939 he slipped on the floor of the barn at said institution causing him to fall with great force and thereafter developed a hernia. That he immediately reported the injury to Doctor Otis H. Law who was at that time employed by the respondent at the Pontiac Branch of the Illinois State Penitentiary, and that on the 31st day of March 1939, an operation was performed by the staff physician at the prison hospital. Claimant remained therein for approximately four weeks.

Claimant further testified that he returned to his work on May 27, 1939 but suffered intense pain from March 25, until July 23, 1939. He testified that he suffered a recurrent traumatic rupture soon after the original operation and that on April 29, 1940 he again submitted to an operation which was performed by Doctor J. D. Scouller at the St. James Hospital in Pontiac, Illinois; that he made a satisfactory recovery following said operation and returned to work for the respondent on October 30, 1940 at the Joliet Branch of the Illinois State Penitentiary. The departmental report, which is prima facie evidence, shows that claimant was first employed on April 7, 1936, as a guard at the Illinois State Penitentiary. That he filed an application for a transfer to the Pontiac Institution and reported there for duty on July 1, 1936, and submitted his resignation at that branch July 31, 1939.

The record in this case is very unsatisfactory, and we are unable, upon a careful consideration thereof, to say with certainty whether or not this claimant was actually disabled for any period of time from his employment as a result of the alleged injury except about four weeks following the first operation in which he received salary.

Liability under the Workmen's Compensation Act cannot rest upon imagination, speculation or conjecture or upon a choice between two views equally compatible with the evidence but such liability must arise out of the facts established by a preponderance of the evidence.

The general rule of law that the burden of proof is upon the plaintiff to prove his case by a preponderance or greater weight of the evidence, is applicable to claims under the Act, and where the only evidence in support of claim for temporary total disability is the unsupported

testimony of claimant the evidence is insufficient to justify award therefor.

Claimant has not sustained his burden of proving his right to temporary total compensation. An award in this case if allowed to the claimant, would have to be based not upon the facts contained in the record but it necessarily would have to be upon conjecture.

This claim for temporary total compensation must be denied.

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(No, 3462—Claim denied.)

LUTHER F. COBB, et al. Claimant, vs. STATE OF ILLINOIS,  
Respondent.

*Opinion filed November 12, 1946.*

*Petition of claimant for rehearing denied January 14, 1947.*

SHARL BASS, and JACK L. SACHS, for claimant.

GEORGE F. BARRETT, Attorney General and WILLIAM L. MORGAN, Assistant Attorney General of counsel, for respondent.

*WORKMEN'S COMPENSATION ACT—when evidence insufficient to prove that there was causal connection between the typhoid fever contracted by claimant and subsequently cured and death of employee—claim for compensation must be denied.* Where deceased employee had contracted typhoid fever, while working as an attendant at hospital and was later discharged as cured and thereafter was treated for diabetes and subsequently died of that sickness—there is insufficient evidence to prove a causal connection between the accidental injury of typhoid fever and death of decedent—to justify an award for compensation therefor.

*SAME—Evidence—when opinion of physician based wholly on hospital report and not upon observation or examination of patient—insufficient to sustain claim.* Where physician testifying on behalf of claimant bases his opinion wholly on hospital report, without ever having seen the patient alive, and his admission that typhoid fever is no cause for diabetes—his testimony is held to be insufficient to prove that death resulted from accidental injuries arising out of and in the course of decedent's employment.

*SAME—burden of proof in claims under—is on claimant.* It is the duty of this court to weigh and consider the evidence and if it is found the evidence fails to support the averments in the complaint, the court must deny the claim. Liability under the Act cannot rest upon imagination, speculation or conjecture, or on a choice between two views equally compatible with the evidence, but must be based upon facts established by a preponderance of the evidence. *Berry vs. Industrial Commission*, 335, Ill. 374.

### DAMRON, J.

This complaint was filed on February 23, 1940 by Cloteel Cobb for an award under the Compensation Act.

The complaint alleges that on the 19th day of August 1939, Cloteel Cobb was employed as an attendant at the Manteno State Hospital and on that date contracted typhoid fever during the course of her employment in said institution; that medical, surgical and hospital treatments were partially furnished by the respondent; that the earnings of said employee during the year preceding her alleged injury was \$649.20 plus room and board; that during the time of her temporary disability the respondent paid her full salary. Claim is made herein for \$22.00 a week for complete and permanent disability, including pension for life as provided in Paragraph (e) of Section 8 of the Workman's Compensation Act; that said claimant at the time of the alleged injury was 40 years of age and that she was the mother of four children under the age of 16 years.

On September 15, 1944, a suggestion of death of the above claimant was filed in this Court showing that she had died on March 25, 1943. Leave was given to substitute Luther F. Cobb, as husband of the claimant and as father of Maxine Cobb, Billy Cobb, Doris Cobb and Harvey Cobb, minor children of Cloteel Cobb and Luther F. Cobb. The record consists of the following:

Complaint, stipulation, order to show cause, suggestion of death of claimant and motion to substitute hus-

band, Luther F. Cobb, et al, stipulation for continuance of rule to show cause, order to show cause dated November 13, 1945, motion of claimant to vacate, order of dismissal and to reinstate, transcript of evidence, waiver of claimant's brief and argument, medical report, waiver of brief and argument of respondent, letter from Dr. Edward Ross, commissioner's report of findings, copy of death certificate, statement for services rendered by A. M. Rothbart for taking and transcribing testimony.

The evidence in support of this claim was filed in this Court on May 27, 1946 consisting of the testimony of Luther F. Cobb, the present claimant, and Doctor Alfred J. Mitchell. The death certificate and hospital record of the Manteno State Hospital were introduced in evidence on behalf of the respondent.

The hospital record discloses that the said Cloteel Cobb was admitted to the medical hospital at the Manteno institution on August 19, 1939 under the care of staff physician, Doctor Spinka, and there remained until October 28, 1939. The hospital record further discloses that patient was given daily treatments of insulin throughout the period of her hospitalization, and discloses that the stools were negative as to typhoid fever on October 13, 1939, again on October 17, 1939 and on October 21, 1939; that this patient was discharged from further treatment for typhoid fever on October 28, 1939; that on her discharge a diabetic diet was ordered for her and insulin treatments of 10-5-10 were recommended by Doctor Spinka and he also ordered her to bring a specimen of her urine to the laboratory daily for examination as to sugar content.

The evidence discloses that after her discharge from the hospital on October 28, 1939 she returned to her home and there remained until her death on March 25, 1943.

A death certificate filed in this case gives the immediate cause of death as cardiac failure due to diabetic coma due to diabetes and further that this disease was in no way related to the occupation of the deceased, said death certificate being signed by Doctor Fred L. Darnell, Momence, Illinois, who was not called as a witness on behalf of claimant or respondent.

A physician was called on behalf of claimant who gave an opinion based on a hypothetical question that there was a direct causal relationship between the on-set of the typhoid fever and the subsequent condition of ill being of the hypothetic individual, and the relationship between the antecedent diabetes and the cause of death of the hypothetic person.

On cross examination he admitted he had based this opinion wholly on the hospital report filed in this cause and that he had never seen claimant's intestate during her lifetime. He readily admitted, however, that typhoid fever is no cause for diabetes and that the diabetes suffered by Mrs. Cobb anteceded the attack of typhoid.

The evidence in this case taken as a whole conclusively shows that claimant's intestate suffered an attack of typhoid fever on August **19, 1939** during the course of her employment by the respondent but recovered fully from this attack. That prior to said onslaught she was the victim of diabetes and ran the usual course of a diabetic from which she died March **25, 1943**.

In *Elliott vs. State*, C. C. R. **14**, page **227**, this Court said. "It is the duty of this court to weigh and consider the evidence in the record and if it is found that the evidence fails to support the averments in the complaint, the court must deny the claim. Liability under the Compensation Act can not rest upon imagination, speculation, or conjecture, or on a choice between two views equally

compatible with the evidence, but must be based upon facts established by a preponderance of the evidence. *Berry vs. Industrial Commission*, 335 Ill. 374. Awards for compensation can not be based upon possibilities or probabilities, but must be based upon evidence the preponderance of which shows that claimant has incurred a disability arising out of and in the course of his employment, *Standard Oil Company vs. Industrial Commission*, 322 Ill. 524; *Weimer vs. State*, 12 C. C. R. 244."

Claimant having received full salary from the respondent during her hospitalization period the claim under the complaint for temporary total disability must be denied for the reason that she was over paid for non-productive work; her claim for complete and permanent disability from the 19th day of August 1939 to the 25th day of March 1943 must be denied for lack of proper proof and likewise the claim of the present claimant under the provisions of Section 7 (a) of the Workman's Compensation Act for the death of Cloteel Cobb, his wife, must be denied for lack of proper proof.

Awards as prayed in the complaint as amended are denied.

A. M. Rothbart, court reporting service was employed to take and transcribe the testimony in the above entitled cause and rendered services in that behalf on February 18th and May 2nd, 1946.

The charges for these services are \$29.40 and we find that that is fair, reasonable and customary charges for such services.

An award is therefore entered in favor of A. M. Rothbart, court reporting services, Chicago, Illinois in the sum of \$29.40.

(No. 3662—Claim denied.)

CHARLES W. DUTTON, Claimant, vs. STATE OF ILLINOIS,  
Respondent.

*Opinion filed November 12, 1946.*

HAROLD TUNNELL, for claimant.

GEORGE F. BARRETT, Attorney General, M. F. MILNE  
and C. ARTHUR NEBEL, Assistant Attorneys General of  
counsel, for respondent.

WAR VETERAN'S GRAVES ADMINISTRATION—*provisions of Acts creating the same—and appropriations made by General Assembly in pursuance thereof—controlling.* The provisions of paragraph 59 (a) Chapter 21 of Illinois Revised Statutes 1939 authorized the erection of head stones at the graves of soldiers and sailors of the United States and the appropriations by the General Assembly in pursuance thereof included a sum of money for transportation and setting of stones. Neither the Act nor the appropriation provided for the employment or compensation of anyone to re-set any stones previously placed on said graves. Consequently a claim for work done in re-setting other stones which were already in place or for placing "collars" around certain stones which had previously been set—must be denied.

*SAME—doctrine of 'implied contract to pay for services rendered—not applicable to State.* While it is true that when one furnishes material or labor for another, and there are no circumstances showing a different intent on the part of the parties to the transaction, the law will raise an implied contract that the recipient of the labor or materials will pay the fair and reasonable value of the same, this doctrine is not applicable to a sovereign state; the respondent herein.

PRINCIPAL AND AGENT—*authority of agent of State—one dealing with bound' to know extent of.* One dealing with an officer or agent of the State is bound to ascertain the extent of authority of said officer or agent to bind the State, and where such authority is conferred solely by and under express statutory power, does so with notice of limitations thereof and therein.

DAMRON, J.

In 1939 General John G. Garrity was superintendent of the Department of Veterans Grave Registration of the State of Illinois. During that year he employed the claimant, Charles W. Dutton, to erect government issue head stones of war veterans in cemeteries in certain

counties of this State. This employment of the claimant was authorized under Chapter 21, Paragraph 59a, Illinois Revised Statutes 1939, which provided for the erection of head stones at the graves of soldiers and sailors of the Army of the United States. Appropriation<sup>6</sup> by the 61st General Assembly to the bureau of War Veteran's Graves Administration included the sum of \$20,000 "for transportation and setting of stones."

The record discloses that this claimant performed services for General Garrity and he claims he re-set and repaired. a number of head stones at the graves of veterans which during the lifetime of General Garrity was paid through the office of the Adjutant General.

On August 10, 1940, General Garrity died, thereby creating a vacancy in the office of Adjutant General. The record discloses that the claimant, however, continued to re-set stones thereafter and with one exception all the work done by this claimant was re-setting old stones.

He makes a claim for this work for \$471.80.

This Court has heretofore held that where one renders services to the State, on the order of one authorized to contract for same, and submits a bill in the correct amount within a reasonable time, and due to no fault or negligence on his part, same is not approved and vouchered for payment *before lapse of appropriation* from which it is payable, an award may be made for the value thereof where at the time same was furnished there was sufficient funds remaining therein to pay same. *Sheppley vs. State*, 14 C. C. R. 204; *Catholic Bishop of Chicago, et al vs. State*, 12 C. C. R. 440; *Rock Island Sand and Gravel Company*, 8 C. C. R. 165; *Oak Park Hospital Incorporated vs. State*, 11 C. C. R. 219.

The authority of this Court to pay a claim such as this must come from the General Assembly. Without a

specific appropriation for the payment of services such as was rendered by this claimant this Court is without jurisdiction. An appropriation for the services rendered is a condition precedent to an award.

Here it must be noted that the appropriation of the 61st General Assembly to the bureau of War Veterans Graves Administration was for transportation and setting of head stones only. There was no appropriation made to the bureau to pay for work of re-setting other stones which were already in place or for placing "collars" around certain stones which had previously been set.

The claimant admits that he was never an employee of the State and while it is true he might be designated an independent contractor yet it is also true that General Garrity did not have the statutory authority to employ this claimant to do anything other than the setting of new stones. He had no legal right to employ anyone to maintain, repair or re-set stones which had been placed at the heads of veterans graves under the authority of the General Assembly.

Claimant, while admitting he was not an employee of the respondent, nevertheless says that when one furnishes material or labor for another, unless there are circumstances showing a different intention on the part of the parties in the transaction, the law will raise an implied contract that the recipient of labor or materials will pay the fair, reasonable value of the same.

We agree that doctrine has been upheld in the cases cited by the claimant, but here we find the respondent is a sovereign State and this doctrine does not apply.

For the reasons assigned this claim must be denied.

Award denied.

(No. 3788—Claimant awarded \$7,000.00.)

J. ROY BROWNING, AS TRUSTEE FOR THE ESTATES OF THE BURTON COAL COMPANY, THE SEYMOUR COAL COMPANY AND THE FREEMAN COAL MINING COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed November 12, 1946.*

JACOB B. COURSHON, for claimant.

GEORGE F. BARRETT, Attorney General, for respondent; WILLIAM L. MORGAN and WILLIAM C. WINES, Assistant Attorneys General, of counsel.

ILLINOIS INDUSTRIAL COMMISSION—WORKMEN'S COMPENSATION ACT—*Agreement entered into by claimant with Illinois Industrial Commission—whereby certain sums of money were deposited with said Commission in order to qualify claimant as self-insurers, as provided in the Workmen's Compensation Act—money so deposited subsequently embezzled by the Chief Security Examiner of said Commission—claimant insured with responsible company—when award for refund of afore-said deposit justified.* Where it appears that claimant, in order to be able to do business in this State, entered into an agreement with the Illinois Industrial Commission, as authorized under the Workmen's Compensation Act, whereby he deposited certain sums of money with the said Commission in order to qualify as a self-insurer, under the said Act, and claimant subsequently insured with a responsible insurance company, an award for refund of the deposit money is justified and proper.

*SAME—Contracts—Illinois Industrial Commission has authority to enter into contracts with those desiring to become self-insurers—under the provisions of the Workmen's Compensation Act.*

*SAME—Contracts—when provisions of contract controlling.* Where an employee of the Illinois Industrial Commission embezzles funds deposited with him in his official capacity, the State is bound to make good the loss. Any party, including the State, desiring to limit his liability under a contract in the event of contingencies, must make provisions therefor in said contract.

DAMRON, J.

J. Roy Browning, as trustee for the estates of the Burton Coal Company, the Seymour Coal Company and the Freeman Coal Mining Company, files this claim, seeking an award of \$7,000.00.

The facts are not in dispute.

In the month of December, 1935, a contract was entered into by and between the above named Seymour Coal Company and Freeman Coal Company, of Chicago, Illinois, and the Industrial Commission of the State of Illinois, in order to qualify these companies as self-insurers under the provisions of the Workmen's Compensation Act of the State of Illinois, said agreement, marked Exhibit B, being in words and figures as follows :

THIS AGREEMENT WITNESSETH:

That the undersigned, the SEYMOUR COAL COMPANY and FREEMAN COAL MINING COMPANY of Chicago, Illinois, has on the date hereof, deposited with the undersigned, Industrial Commission of State of Illinois, the following:

Seymour Coal Company.. .....	\$2,000.00
Freeman Coal Mining Company.. .....	2,000.00
	<hr/>
	\$4,000.00

The said mining companies are each to pay to the said Industrial Commission the sum of **\$375.00** each month to be held by said Commission until the aggregate amount reaches the sum of \$5,000 for each of said mines when a new escrow agreement is to be executed making some banking institution the escrowee under an agreement similar to this said agreement (said monthly payments to be made on the first Monday of each month commencing January, 1936.)

It is agreed by and between the parties hereto that the said moneys shall be held by the said Industrial Commission as a guarantee for the payment of any judgments entered against the said Seymour Coal Company and Freeman Coal Mining Company for the payment of any sums found by process of law to be due to the employees of the said Seymour Coal Company and Freeman Coal Mining Company under a law of the State of Illinois, known as the Workmen's Compensation Law, approved June 28, 1913, and in force July 1, 1913, and that the said moneys shall be held until released and surrendered to the said Seymour Coal Company and Freeman Coal Mining Company in accordance with the further terms of this Agreement.

It is further agreed between the parties that the said moneys shall be surrendered to the said Seymour Coal Company and Freeman Coal Mining Company upon the presentation to the undersigned, the Industrial Commission, of a certificate or statement signed by the Industrial Commission of Illinois, and the said Seymour Coal Company and Free-

man Coal Mining Company that no payments are due and unpaid from the said Seymour Coal Company and Freeman Coal Mining Company to its employees or others under the Compensation Law.

It is further understood and agreed by and between the parties that the interest from these moneys shall be surrendered to the Seymour Coal Company and the Freeman Coal Mining Company as it becomes due.

SIGNED AND SEALED at Chicago, Illinois, this. ....day of December, A. D. 1935.

ILLINOIS INDUSTRIAL COM-  
MISSION,

By (L. J. O'CONNELL)

*Chief Security Examiner*

SEYMOUR COAL COMPANY,

By (FRED A. BURTON)

*Partner*

FREEMAN COAL MINING COM-  
PANY,

By (FRED A. BURTON)

*President*

Pursuant to said agreement, the Burton Coal Company, for and on behalf of the Seymour Coal Company and the Freeman Coal Mining Company, deposited with the Industrial Commission, the following amounts of money :

December 2, 1935.....	\$2,000.00
December 2, 1935.....	2,000.00
January 2, 1935.....	750.00
February 1, 1936.....	750.00
April 6, 1936.....	750.00
May 11, 1936.....	750.00
Total .....	\$7,000.00

The above deposits were made by check, payable to the Industrial Commission of the State of Illinois, and were deposited to the credit of the Industrial Commission, by one L. J. O'Connell, its chief security examiner, in the Centennial Illinois National Bank and Trust Company of Chicago.

Thereafter, there was issued a certificate or notice of approval, by the Industrial Commission, certifying that the above named coal companies were self-insurers,

under Section 26 of the Workmen's Compensation Act, and had complied with all of the terms and provisions set up in said act.

On November 7, 1938, in the District Court of the United States for the Northern District of Illinois, Eastern Division, in consolidated causes No. 69296, entitled "In the Matter of the Burton Coal Company, a corporation, debtor, Seymour Coal Company, a corporation, debtor, Freeman Coal Mining Company, a corporation, debtor," the above claimant, J. Roy Browning, was appointed trustee and the exclusive possession and control of all of the above named property, assets and business of said companies, wherever located, were entrusted to the said J. Roy Browning, as such trustee, the order of said appointment being attached to the complaint and marked Exhibit A, and made a part thereof.

On or about April 22, 1939, pursuant to the Statute of the State of Illinois, the said Seymour Coal Company and Freeman Coal Company elected to insure their entire liability to pay any judgments entered against them, or either of them, for the payment of any sums found due to the employees or their dependents under the Illinois Workmen's Compensation Act, by purchasing policies of insurance with the Bituminous Casualty Company of Rock Island, Illinois, which said policies of insurance undertook to cover all of the employees and the entire compensation liability of both coal companies and from that date until the filing of this complaint, said policies of insurance have been in full force and effect. The complaint states, and it is not denied by the respondent, that from the time of the deposit of money with the Industrial Commission, as aforesaid, until the issuance of the policies of insurance with the said Bituminous Casualty Company, many awards or judgments were made and

entered against said Seymour Coal Company and Freeman Coal Company, in favor of sundry of their employees, and each and every of such awards or judgments were duly or promptly paid, so that at no time were any of the funds heretofore deposited with the Industrial Commission ever resorted to; the complaint further states that there does not now exist any judgments against said companies, or either of them, entered in compliance with the provisions of said Workmen's Compensation Act, that remain unpaid, or in default, and it is further alleged, in said complaint, and is not denied by the respondent, that there has not been and is not now, any further need, necessity or requirement by law, or otherwise, that the monies deposited under and pursuant to the contract, above set forth, be held by said Industrial Commission, and that the trustee of and for the estate of said companies, is entitled to the return of said funds, together with all interest due thereon, as provided in said written contract.

Attached to said complaint, and made a part thereof, is a written demand, marked Exhibit C, dated February 15, 1943, addressed to Alfred J. Borah, Chairman of the Industrial Commission of the State of Illinois, 205 West Wacker Drive, Chicago, Illinois, making formal demand on the Industrial Commission for the return of the sum of \$7,000.00, heretofore deposited with the Industrial Commission, as aforesaid, under the terms of the written contract entered into, as aforesaid. This exhibit shows that the claimant had made, prior thereto, repeated demands upon the Industrial Commission for the return of the money deposited with it, as aforesaid, but that said Industrial Commission failed and refused to return said money or any part thereof.

The question to be decided in this case is whether or

not the State of Illinois is liable to the claimant for the return of the sum of \$7,000.00, heretofore deposited with said Commission, as above set forth.

The respondent urges many reasons why the claim should be denied. It concedes that the funds heretofore deposited by the claimant are not on hand and states that the funds have been dissipated without the consent of the claimant. It concedes also that the companies deposits of the funds, in question, were, in all respects, lawful, proper, and in accordance with law, and that no measure of diligence on claimant's part could have prevented the loss which was sustained.

The respondent admits that the chief security examiner, Lawrence J. O'Connell, embezzled these funds deposited by this claimant with the Industrial Commission of Illinois.

The deposit of money represented by this claim was an involuntary transaction and was required by the law of the State of Illinois, before the claimant could do business in this State. (Ill. Rev. Stat. 1941, Chap. 48, par, 172-26.)

The respondent questions the authority of the Industrial Commission to enter into this contract. It has been held that the Industrial Commission is authorized by law to enter into a contract such as we find here. (*Pinkerton's Nat. Detective Agency vs. Fidelity & Deposit Co.*, 138 Fed. 2d. 469.)

In that case the Court said: "Having held that the Commission had the authority (to receive and hold the bonds in trust), we think there is little room to doubt but that O'Connell was acting in his official capacity. The record discloses in numerous ways that he was held out to the public as agent and representative of the commission."

It appears to the court that the contract entered into by the State, through its Industrial Commission, is one to be upheld by this court. This was a contract which the Industrial Commission had a legal right to make and that the State is bound thereby. The Industrial Commission breached this contract. Under this contract, the employers (claimant herein) had a right to believe that its deposit would be returned upon full compliance upon its part. The contract provided for the return of the deposit if the coal companies ceased doing business or substituted an insurance policy therefor. The claimant elected to furnish a policy. The policy was accepted by the Commission. No judgments or awards were outstanding against the deposit at the time demand was made for the refund.

We think it would be against public policy and we can not believe the legislature intended that an employer, when complying with Sec. 26 of the Act, deposited money or securities at his peril. If a party including the state, desires to limit his liability thereunder in the event of contingencies, he must make provision therefor in said contract.

At the time this claim was filed in this Court there was pending in the District Court of the United States, for the Northern District of Illinois, Eastern Division, a cause of action, entitled Montgomery Ward & Co., Incorporated, Plaintiff, vs. Fidelity and Deposit Company of Maryland, a corporation, Defendant—Fidelity and Deposit Company of Maryland, a corporation, Cross-complainant, vs. Montgomery Ward & Co., Incorporated, et al., Cross-Defendants, Civil Action No. 43C 1105. This claimant was made party Cross-Defendant to the Cross-complainant, in the nature of a bill of interpleader, which was filed in said cause by the Fidelity and Deposit Co.

of Maryland, Defendant and Cross-complainant, and summons was issued upon this Claimant as such Cross-defendant therein, and this Claimant was required by order of Court to file his answer therein. In said answer this Claimant as Cross-defendant made claim against said Fidelity and Deposit Co. of Maryland as surety for Lawrence J. O'Connell, an employee and chief security examiner of the Industrial Commission of the State of Illinois, basing said claim upon the alleged embezzlement by said Lawrence J. O'Connell, of funds amounting to the sum of \$7,000.00 heretofore deposited with the Industrial Commission. The respondent, through its Attorney General in its brief filed November 21, 1945, contended that inasmuch as the cause of action above referred to was still pending in the United States District Court, that the claimant had not exhausted his legal remedies before filing his claim in this Court and called this Court's attention to our invariable rule that access may not be had to the Court of Claims until the claimant has exhausted all other means of relief.

On October 18, 1946, a statement was filed by this claimant in this Court in reference to the cause of action heretofore pending in the District Court of the United States, for the Northern District of Illinois, Eastern Division, Civil Action No. 43C 1105, showing that upon the petition of this claimant as Cross-defendant in said cause in said District Court, a summary hearing was had upon the claim of this claimant against the Fidelity & Deposit Co. of Maryland, resulting in an order entered in said cause on October 11, 1946, denying the right of recovery on the part of this claimant as Cross-defendant, and dismissing this claimant as Cross-defendant from said proceedings with prejudice.

'A certified copy of said decree being filed in the

Court of Claims, marked exhibit "B" and made a part of this record.

After careful consideration of the record in this case, we are convinced this claim should be allowed and the deposit, heretofore made to the Industrial Commission, be refunded to the claimant.

An award is therefore entered in the sum of \$7,000.00 in favor of J. Roy Browning, as trustee of the Estates of the Burton Coal Company, the Seymour Coal Company and the Freeman Coal Mining Company.

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(No. 3870—Claimant awarded \$1,190.02.)

JOE BRANNON, Claimant, vs. STATE OF ILLINOIS, Respondent.

*Opinion filed November 12, 1946.*

RAY E. WESNER, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

*WORKMEN'S COMPENSATION ACT—employee of Department of Public Works and Buildings—within provisions of—where an award for compensation for temporary total disability and permanent partial loss of use of right foot is justified. Where an employee of the Department of Public Works and Buildings sustains accidental injuries, arising out of, and in the 'course of his employment, resulting in temporary total disability and permanent partial loss of use of his right foot, an award may be made for compensation therefor in accordance with the provisions of the Act, upon compliance by the employee with the terms thereof, and proper proof of claim for same.'*

ECKERT, C. J.

On November 18, 1943 claimant, Joe Brannon, was an employee of the respondent in the Department of Public Works and Buildings. While working with a group of employees, on State Bond Issue Route Number 1 in Lawrence County, Illinois, moving an air compressor, the rear wheel of the compressor rolled onto

his right foot, fracturing the bones forming the arch of the foot. He was taken immediately to Dr. Tom Kirkwood, at Lawrenceville, Illinois, for first aid, and was then transferred to the Palestine Clinic.

Dr. Kirkwood reported to the respondent that claimant had suffered a fracture or fracture dislocation at the joint between the tarsal bones and the first and second metatarsals of the right foot. Dr. J. A. Ikemire, in charge of the Palestine Clinic, after examination of claimant's foot, reported to the respondent as follows :

Fracture in the proximal  $\frac{1}{3}$  of the second metatarsus. Fracture in the distal  $\frac{1}{3}$  of the third and fourth metatarsus. Slight fragmentation of the lateral portion of the proximal head of the fifth metatarsus all on the right foot. Arranged foot in as near normal relations as possible and applied a loose fitting circular plaster cast to be changed as soon as swelling disappears. Permanent disability—a rather painful foot for sometime, but a useful foot.

Claimant remained under the care of Dr. Ikemire until March 7, 1944 when the doctor reported to respondent that claimant "should begin light work now". At that time Dr. Ikemire still was of the opinion that there would be no permanent disability. A month later, however, he reported to the respondent that the permanent disability "should not be much, if any."

At the time of the accident claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this state, and notice of the accident and claim for compensation were made within the time provided by the act. The accident arose out of and in the course of the employment.

Claimant was first employed by the respondent on October 3, 1943, and at the time of his injury was earning \$1.00 per hour. Eight hours constituted a normal working day, and employees of the respondent engaged in the same capacity and at the same rate as claimant

were employed less than 200 days a year. At the time of the accident claimant had no children under sixteen years of age dependent upon him for support. Claimant's compensation rate is therefore \$17.63 per week.

Claimant was temporarily totally disabled from November 18, 1943 to March 7, 1944 and was paid compensation at the rate of \$17.63 per week during that entire period, or the total sum of **\$277.05**. Temporary compensation was terminated when claimant's physician reported that claimant was ready to return to work. Claim for further compensation for temporary disability must, therefore, be denied..

No claim is made for medical, hospital, or surgical services since all such services were paid for by the respondent. Claim, however, is made for total loss of use of claimant's right foot.

Claimant testified that his foot continues to trouble him; that if he uses it for any length of time the instep becomes very sore and he experiences sharp pains; that he is unable to use his foot steadily, and is unable to do the work which he did prior to the injury.

Dr. Marjory Ikemire, called as a witness on behalf of claimant, testified that she had examined claimant's right foot and found considerable permanent impairment of its use in any gainful occupation. She stated that the circulation of the right leg and foot showed definite impairment; that there was evidence of faulty weight bearing; that claimant's right foot, and half way up his right leg to the knee, remain purple most of the time. Dr. Ikemire also testified that the X-rays, which were admitted in evidence, showed the tarsal bones in an abnormal position, and also showed signs of osteoporosis of the bones.

From the record, and from personal observation of

the claimant, the court is of the opinion that claimant has suffered a 50% permanent loss-of use of his right foot. He is, therefore, entitled to the sum of \$17.63 per **week**, for a period of 67% weeks, or the total sum of \$1,190.02, all of which is accrued and is payable forth-with.

An award is therefore entered in favor of the claimant for the total sum of \$1,190.02.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

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(No. 3912—Claim denied.)

CECIL E. STALLARD, Claimant, vs. STATE OF ILLINOIS, Respondent.

*Opinion filed November 12, 1946.*

DONOVAN D. McCARTY, for claimant.

GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

**WORKMEN'S COMPENSATION ACT**—*court without jurisdiction to hear claim under—where no claim made or application filed for compensation within time fixed in Section 24.* Where no claim is made for compensation, nor any application filed for same, within time fixed in Section 24 of Workmen's Compensation Act, the court is without jurisdiction to proceed with hearing on application filed thereafter.

**SAME**—*same.* Claim cannot be allowed on the basis of equity and good conscience.

ECKERT, C. J.

On May 9th, 1942 the respondent, through its Department of Public Safety, issued a 1936 Indian motorcycle to the claimant, Cecil E. Stallard, State Highway Maintenance Policeman, to be used by him in the performance of his duties. The motorcycle was equipped

with narrow tires, was hard riding, causing a constant jarring, and claimant soon began to suffer pains in his back. On August 3, 1942 he consulted Dr. Sheldon A. Jackson, of Olney, Illinois. A physical examination by Dr. Jackson at that time was negative, but the doctor prescribed 'diathermic massage, strapped claimant's back, prescribed a belt, and prescribed sodium salicylates and anadyne for pain. It was Dr. Jackson's opinion that the pain was caused by riding the motorcycle.

Claimant continued these treatments under the care of Dr. Jackson until February 20, 1943, although Dr. Jackson testified that he advised an operation for the removal of an intervertebral disc in December of 1942. Claimant paid Dr. Jackson for his services the total sum of \$88.50.

At the time claimant first consulted Dr. Jackson, he took the motorcycle to the State Highway Garage at Effingham, Illinois, and there learned that it had a broken spring in the seat. No other motorcycle was available for claimant's use, and no parts were available for repair, so claimant continued to ride the motorcycle regularly for a month longer.

The pain continued, and in the early part of 1943 claimant reported his illness to his superior officers. In June, 1942, he consulted Mr. Harry Yde, then Chief of the Illinois State Police, at Springfield. As a result of that conference, claimant was examined by Dr. J. Albert Key, at Barnes Hospital, in St. Louis, Missouri, in the summer or early fall of 1942. Dr. Key advised claimant that he had a ruptured intervertebral disc, which necessitated an operation, and which was probably caused by riding a motorcycle.

Claimant reported the findings of Dr. Key to his superior officers, but received no instructions, other than

the advice of Capt. Trautsch, who told claimant that he should go ahead and have the operation, pay for it himself, and later present the bill to the department. Capt. Trautsch also advised him that his pay would continue during the period of his surgery and convalescence. Claimant testified, "That was the general advice that I had in Springfield that day from Mr. Guy and Mr. Trautsch," and placed the conversation during the latter part of **1943**.

Claimant, however, continued to work, and continued to ride the motorcycle. The pain in his back did not lessen. Sometime during **1944**, he consulted an attorney, who advised him to have the operation performed. This was done, at Barnes Hospital, in St. Louis, on February **23, 1945**, and two intervertebral discs were removed. He was discharged from the hospital on March 15, 1945. The total cost of the operation, including hospital room, X-ray, laboratory, anesthesia, and drugs, amounted to \$265.75, which claimant paid. He now seeks reimbursement from the respondent for this payment and the payment to Dr. Jackson, in the total sum of **\$354.25**.

Aside from the fact that it is questionable whether claimant has suffered an injury which is compensable under the Workmen's Compensation Act, his claim can not be allowed because it was not filed in apt time. The claim was filed May 1st, **1945**, three years after claimant first rode the motorcycle in question, and almost two years after claimant was first advised of the necessity of an operation. Section **24** of the Workmen's Compensation Act provides that no proceedings for compensation under the act shall be maintained unless application for compensation is filed within one year after the date of the accident. Section 10 of the Court of Claims Act, allowing claims against the State to be filed within five

years after accrual, is inapplicable. *Scott vs. State*, 13 C. C. R. 163. Furthermore, the claim can not be allowed on the basis of equity and good conscience. *Crabtree vs. State*, 7 C. C. R. 207.

Considering the facts most favorably to the claimant, to comply with the act, this claim should have been filed within one year after the results of the examination of Dr. Key were made known to him.

The claim is, therefore, denied.

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(No. 3951—Claim denied.)

CATHERINE BUCKLEY, Claimant, *vs.* STATE OF ILLINOIS,  
Respondent.

*Opinion filed November 12, 1946.*

GRANGER & BECKERS, Attorneys, for claimant.

GEORGE F. BARRETT, Attorney General and WILLIAM L. MORGAN, Assistant Attorney General, of counsel, for respondent.

**WORKMEN'S COMPENSATION ACT**—*burden of proof in claims under—is on claimant—when evidence insufficient to sustain claim for compensation under.* The general rule at law applicable to this case is that the burden of proof is upon the claimant to prove her case by a preponderance or greater weight of the evidence and failure to so do bars an award.

**SAME—same—same.** No award can be made for compensation under the Workmen's Compensation Act where the same is based upon imagination, speculation or conjecture or upon a choice between two views equally compatible with the evidence; it must be based on facts established by a preponderance of the evidence.

DAMRON, J.

On the 17th day of August 1944, claimant was injured during the course of her employment at Kankakee State Hospital. The injury was caused by claimant falling on the porch of the institution while attempting to subdue a patient.

Her complaint alleges that she suffered a compound fracture of the left femur, injured her pelvic bone and hip joint which she claims has resulted in complete loss of use of her left leg.

Under this complaint claimant seeks an award for permanent and total loss of use of her left leg and for temporary compensation during the period of her disability as provided in Section 8, Paragraph (e) of the Act.

All jurisdictional requirements having been stipulated, the only question for this Court to decide is the nature and extent of claimant's injury. The testimony in this case was taken on the 9th day of July 1946 at which time claimant testified that she constantly suffered pain in her left limb and that at times it was so severe that it prevented her from sleeping at night. After her recovery she reported to the institution for work but claims that employment was refused her due to her physical condition caused by the injury.

To support her complaint Doctor John J. Fahey, staff physician of the Illinois Research Hospital, Chicago, Illinois was called as a witness on her behalf. His evidence shows the [claimant was admitted to the Research Hospital on the 18th day of August 1944; and that he started attending her on August 24, 1944. He testified that she had a fracture of the neck of the left femur; that an open reduction was made at the site of the fracture; that the neck and head of the bone was exposed and that a Smith-Peterson nail was used for a fixation and the wound was then closed. After she was released from the Research Hospital he testified that he saw her in February 1946, examined her and found she had recovered and was able to return to her work. He testified he again examined her on May 4, 1946 and at that time she

did not complain to him of having any pain in her left leg and that it showed no evidence of swelling of the left limb.

Doctor Abraham Simon, Assistant Superintendent, of the Kankakee State Hospital was called to testify on behalf of the respondent. He testified that he examined claimant the day after the injury and found she had fractured the neck of the left femur with some displacement; that he had her admitted to the Illinois Research Hospital, Chicago, Illinois for operative procedure ; that X-rays were made of the injured limb at the site of the fracture, the last film being taken on December 31, 1945. That this film disclosed no particular atrophy of the bone and there was no indication of bone disturbance., When examined in reference to the subjective symptoms testified to by claimant in reference to pain in her left leg he stated that in his opinion if claimant had recurrence of pains it would be due to natural causes and not to the fracture.

The departmental report, dated May 30, 1946 which is a part of this record shows that claimant sustained a simple fracture of the neck of the left femur. That there were no injuries to the pelvic bone or the hip joint. It contains a portion of a letter received under date of September 7, 1945 from the Department of Orthopedics, University of Illinois, stating that claimant's X-rays show complete union and that she was able to return to work at the time she was released.

Liability under the Workmen's Compensation Act cannot rest upon imagination, speculation or conjecture or upon a choice between two views equally compatible with the evidence, but such liability must arise out of the facts established by a preponderance of the evidence. *Inland Rubber Company vs. Ind. Corn.*, 309 Ill. 43; Cry-

*der vs. State*, 12 C. C. R. 291; *Cross vs. State*, 13 C. C. R. 174.

The testimony of this claimant in reference to her alleged condition of ill being is not supported by the medical testimony and awards for injuries under the Compensation Act cannot be made on subjective symptoms.

The burden of proof is on the claimant to show by competent evidence that she has suffered permanent or partial disability and this she has failed to do.

An award for permant partial disability is therefore denied. Likewise her claim for temporary total disability must be denied for the reason the respondent paid her full salary during the time of her disability which far exceeded her compensation rate.

Award denied.

Isabelle Marcotte, court reporter of the County Court of Kankakee, Illinois was employed to take and transcribe the evidence in this cause and has made a charge therefor in the sum of \$20.00. We find that this charge is fair, reasonable and customary in the county where it was made and find the reporter is entitled to be reimbursed.

An award is therefore entered in the sum of \$20.00 payable to Isabelle Marcotte, Court Reporter, County Court, Kankakee, Illinois.

The court further finds that A. M. Rothbart, court reporting services was employed to take and transcribe certain evidence in this cause and that said court reporting services has made a charge for \$25.50 for such services.

The Court finds that the amount of \$25.50 is fair, reasonable and customary charges for services rendered and that this amount should be allowed.

An award is therefore entered in the sum of \$25.50 payable to A. M. Rothbart, court reporting services, Chicago, Illinois.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

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(No. 3968—Claimant awarded \$36.85.)

STANDARD OIL COMPANY, A CORPORATION, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion ~~filed~~ November 12, 1946.

H. E. SCHROEDER, Attorney, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, of counsel, for respondent.

*SUPPLIES—lapse of appropriation out of which could be paid—before presentment of bill—sufficient unexpended balance in appropriation—when award for value may be made.* Where it clearly appears that claimant furnished supplies or rendered services to the State, and **an** appropriation existed out of which payment could be made therefor, an award may be made for reimbursement or payment for said supplies or services where such appropriation lapsed before payment was made for same, and sufficient unexpended balance therefor remained therein, on claim filed in reasonable time.

DAMRON, J.

The above claimant is a corporation authorized to do business in this State.

During the period from and including May 16, 1945 to and including June 30, 1945 claimant sold and delivered to the Division of Highways, Bureau of Maintenance, District 7, at its instance and request certain oil products in the amount of \$25.20; during the period from and including March 22, 1945 to and including June 24, 1945 claimant sold and delivered to the Conservation

Department, General Office Division, District 16, at its instance and request certain oil products in the sum of \$5.40; on March 9, 1945 claimant sold and delivered to the Department of Public Works and Buildings, Division of Highways, Bureau of Maintenance, District 9, at its instance and request certain oil products in the sum of 50c; on March 12, 1945 claimant sold and delivered to the Department of Public Works and Buildings, Division of Waterways, Bureau of Maintenance, District of Lockport, at its instance and request certain oil products in the sum of \$4.85; on May 19, 1945 claimant sold and delivered to the Department of Mines and Minerals, General Office Division, at its instance and request certain oil products in the sum of 90c, being a total of \$36.85 all of which is more particularly described in claimant's bill of particulars attached to this complaint and made a part thereof.

The report of the Division of Highways dated July 1, 1946 shows that the dates of purchase, ticket numbers, points of purchase, the names of the State employees by whom the purchases were made and the volumes and costs of materials were checked by said Division and found to be correct. It further shows that appropriations for the purchase of said oil products had been duly made by the 63rd General Assembly from which these purchases would have been paid in regular course had the invoices been presented to the various Departments before the appropriation lapsed.

An award is hereby entered in favor of the claimant, Standard Oil Company of Indiana, in the sum of \$36.55.

(No. 3970—Claimant awarded \$1,748.80.)

WADE HAMPTON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed November 12, 1946.*

A. L. YANTIS, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, of counsel, for respondent.

*WORKMEN'S COMPENSATION ACT—when award may be made for partial permanent loss of use of left arm.* Where employee of State sustains accidental injuries, arising out of and in the course of his employment, resulting in partial loss of use of his, left arm, an award may be made for compensation therefor in accordance with the provisions of the Act, upon compliance by employee with the requirements thereof.

*SAME—when refusal of injured employee to submit to major operation tendered to him by his employer, as not unreasonable, his claim for compensataon will not be denaed.* Where an aged employee, upon advice of a physician, refuses to submit to a major operation tendered to him by his employer, on the ground that it might prove to be more injurious than beneficial, because of the attending serious risk to the member, such refusal is not unreasonable—and claim for compensation should not be denied. *Florczak vs. Indus. Corn.* 381 Ill. 120.

DAMRON, J.

On August 22, 1945 claimant, Wade Hampton, received an accidental injury while engaged in his employment for the Division of Highways at or near Shelbyville, Illinois. He was employed by the Division on August 18, 1945 as a common laborer at a wage rate of 70c per hour. On August 22, 1945, he was one of a group employed in shoveling gravel from a railroad car at the Big Four Railroad unloading track in Shelbyville. About 4:55 P. M. this claimant, while climbing down the ladder built on the side of the railroad car, missed a step of the ladder, he started to fall, but held on to the ladder rungs with his hand. His weight and the force of the fall loosened his grip causing him to fall to the ground with

great force, dislocating his left shoulder and injuring his left arm.

Claimant was given first aid medical treatment at the Hulick Clinic, Shelbyville, Illinois and allowed to return to his home on the date of the accident. The nature of his injury was found to be dislocation of the left shoulder with the edema surrounding the tissues.

Doctor McHarry of the Clinic estimated the date of the disability to be about one month or longer in healing.

On December 11, 1945, a representative of the Division of Highways called upon the claimant and finding that claimant's shoulder movements were limited made the necessary arrangements for claimant to receive such treatments as would be prescribed by Doctor J. Albert Key, Professor of Clinical Orthopedics, Washington University, St. Louis, Missouri. On December 17, 1945, claimant was examined by Doctor Key who made arrangements for claimant to enter the Barnes Hospital on January 17, 1946 for a manipulation of the shoulder under anesthesia to break up adhesions which had formed following the injury. Upon being informed, the claimant declined to submit to this operation inasmuch as he had been advised that the operation, or manipulation under anesthesia would be very painful and that the net result thereafter would be problematical and could aggravate the condition of his left shoulder and arm.

Upon the hearing before the Commissioner, Doctor E. M. Montgomery, a witness for claimant, testified that in December 1945 he made a physical examination of the claimant and found limited motion in his left shoulder with atrophy of the deltoid muscle. That the patient had fair motion of the left arm, left to right, but was unable to raise the arm. That there was considerable weakness in the hand and forearm, due in the doctor's opinion, to

an injury of the nerve under the deltoid muscle. Some time thereafter, Doctor Montgomery again examined the claimant, and at that time found that the deltoid muscle of the left shoulder had become smaller and more atrophied; that he advised claimant to continue the diathermy treatments which he had been receiving and to continue manipulation of the injured shoulder.

When questioned regarding the beneficial results, if any, of the proposed forced manipulation of the shoulder joint under anesthesia, he testified that considering the condition of the shoulder, as he found it in December 1945, and the fact that claimant was 71 years of age, such an operation was inadvisable. That such an operation, as proposed, might prove to be more injurious than beneficial. That more stiffening of the shoulder joint and greater loss of motion could develop as a result of more adhesions. This medical witness testified that claimant could raise his left arm only one-fourth of the distance that he normally should, as a result of the injuries, and that this condition was permanent.

On cross-examination he testified that there 'was some ankylosis present in claimant's left shoulder joint caused by the adhesions from the periosteum. That the X-ray films introduced in the evidence as claimant's exhibits 1 and 2, showed no arthritic deposits present.

In *Florczak vs. Indus. Corn.*, 381 Ill. 120, the Court having before it a question concerning the refusal of an injured employee to submit to a major operation tendered to him by the employer and the effect the refusal would have upon his compensation payments, said "A majority of the Courts of review in other jurisdictions have adopted the rule that where the operation tendered is of a major character and attended with a serious risk to the member, an injured employee's refusal to submit

thereto is not unreasonable, and compensation should not be denied on that account. This rule is supported by the better 'reasoning and is in accord with what this Court has declared the purpose of the Workmen's Compensation Act to be and the remedies the legislature intended to cover.'

There is no medical evidence in this record which convinces us that the refused operation would have been beneficial to claimant or would have restored the functional loss of use of claimant's left arm.

From a consideration of this record, the Court finds that the claimant and respondent were on the 22nd day of August 1945, operating under the provisions of the Workmen's Compensation Act; that on the last mentioned date claimant received accidental injuries which arose out of and in the course of the employment; that notice of said accident was given to said respondent and claim for compensation on account thereof was made on said respondent within the time required under the provisions of said Act; that earnings of employees in the same classification of this claimant for the year next preceding the injury were \$1,120.00, and that the average weekly wage was \$21.53. That the claimant at the time of the injury had no children under 16 years of age. That necessary first aid, medical and hospital services were provided by the respondent herein.

The record 'discloses that this claimant was unable to perform work from the date of the injury, August 22, 1945, to the 2nd day of May 1946, totaling 36 weeks, for which he is entitled to be paid at his compensation rate of \$12.92. This amounts to the sum of \$465.12. The record further discloses that the respondent, through the Division of Highways, paid to this claimant the sum of \$169.82 as temporary total disability which must be de-

ducted from the above amount leaving a balance due claimant for temporary total disability the sum of \$295.30, payable in a lump sum forthwith.

Claimant is entitled to have and receive from the respondent the sum of \$12.92 per week for a period of 112½ weeks, or the sum of \$1,453.50, as provided in Section 8, Paragraph e of said Act, as amended, for the reason that the injury sustained caused a 50% permanent loss of use of the left arm of the claimant.

Of this amount the sum of \$358.07 has accrued and is payable in a lump sum forthwith. The remainder amounting to the sum of \$1,095.43 is payable to claimant at a weekly compensation rate of \$12.92 beginning November 19, 1946, with one final payment of \$10.15.

An award is hereby entered in favor of claimant, Wade Hampton, in the sum of \$1,748.80, payable as above indicated.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

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(No. 3972—Claimant awarded \$661.73.)

NORTHWEST IGNITION & RADIATOR SERVICE, A PARTNERSHIP.  
Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed November 12, 1946.*

EMIL M. CALIENDO, of Chicago, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

SUPPLIES—*lapse of appropriation out of which could be paid—before presentment of bill—sufficient unexpended balance in appropriation — when award for value may be made.* Where it clearly appears that claimant furnished supplies or rendered services to the State, for which an appropriation existed out of which payment could be made therefor, an award may be made for reimbursement or payment for said supplies

or services where such appropriation lapsed before payment was made for same, and sufficient unexpended balance therefor remains therein, on claim filed in reasonable time.

Sann — United States Code, Title 50, Section 525. Period of military service cannot be included in computing the period limited by law for filing claim.

### ECKERT, C. J.

The claimant, the Northwest Ignition & Radiator Service, is a partnership composed of George Klett, Oscar Schumacher, Phil Glaser, and Emil M. Caliendo. It is engaged in automobile and truck repair service. From September 19, 1941 to June 5, 1943, the claimant supplied materials, and rendered services to the respondent authorized by purchase orders issued by the Division of Purchases and Supplies of the Department of Finance, the orders being numbered D-34016, D-619179, D-73456, and dated July 1st, 1941, July 1st, 1942, and January 1st, 1943, respectively. Claimant has not been paid for these materials and services, the total charge for which amounts to \$661.73.

George Klett, testifying on behalf of claimant, stated that Mr. Caliendo was the partner in charge of collections; that the partnership rendered its last services in June, 1943; that the claim was not filed until July 12, 1946; that the failure to file the claim sooner was due to the absence of Mr. Caliendo, who was in service in the United States Navy for a period of five years; that under the partnership agreement no suit could be filed except upon agreement of all partners; that Mr. Caliendo's Naval service made it impossible to obtain his consent to the filing of this claim. Immediately upon the discharge of Mr. Caliendo, the claim was filed. The respondent offered no testimony other than the department report.

From the record, it appears that claimant furnished

properly and duly authorized materials and services to the respondent, for which it has not received payment; when the charges were incurred there remained a sufficient unexpended balance in the appropriations from which payment could have been made. Claimant's failure to submit its invoices to the respondent within the usual time was the result of the naval service of one of the partners. Under the provisions of Section 525, Title 50, United States Code, the period of military service of Mr. Caliendo can not be included in computing the period limited by law for the filing of this claim. 'Section 22 of the act creating the Court of Claims, which bars claims not filed within two years, is, therefore, not a bar to recovery, and claimant is entitled to an award. *Illinois Bell Telephone Company vs. State of Illinois*, 14 C. C. R. 48.

An award is, therefore, made in favor of the claimant in the amount of \$661.73.

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(No. 3975—Claimant awarded \$5,340.00.)

MERNA MAE ARCHER, WIDOW OF MARVIN C. ARCHER, DECEASED,  
AND JUDITH MAE ARCHER, A MINOR, BY AND THROUGH HER  
MOTHER AND NEXT FRIEND, MERNA MAE ARCHER, Claimants,  
vs. STATE OF ILLINOIS, Respondent.

*Opinion filed November 12, 1946.*

NOBEL G. JOHNSON, for claimants.

GEORGE F. BARRETT, Attorney General; C. ARTHUR  
NEBEL, Assistant Attorney General, of counsel, for re-  
spondent.

WORKMEN'S COMPENSATION ACT—*State Highway Policeman within provisions of—when award may be made for death of, under.* Where a State Highway Policeman is shot and killed, in the course of his regular employment, an award for compensation therefor may be made to those legally entitled thereto, in accordance with Section 7 (a) of the

Workmen's Compensation Act upon compliance with the requirements thereof and proper proof of claim therefor.

DAMRON, J.

Marvin C. Archer was formerly employed by the Department of Public Safety, as a State Highway Policeman. About 6:45 A. M. on the morning of June 18, 1946 while in the company of another State Highway Policeman at Paxton, Illinois, he was shot by a person seated in an automobile, which had been halted by him and his fellow officer in order to question the driver for identification. Death occurred almost instantly. Archer left surviving him his widow, Merna Mae Archer, and his daughter, Judith Mae Archer, a minor, three years of age, the claimants herein. They seek an award for \$5,340.00 as provided under Section 7 (a) of the **Workmen's Compensation Act**, for the death of Mr. Archer.

The record in this case consists of the complaint, copy of the coroner's jury verdict, waiver of brief, statement and argument on behalf of both the claimant and respondent through their respective attorneys, report of the Department of Public Safety and a stipulation that said report shall constitute the record in the case.

The report substantiates the allegations in the complaint and further states that Mr. Archer was 31 years of age at the time of his death, resided in Paxton, Illinois, was first employed by the respondent in the Department of Public Safety, Division of State Police on December 17, 1941; that on November 28, 1943 he obtained a leave of absence in order to join the military forces of the United States and after being honorably discharged re-entered the employment with the Division of State Police on February 1, 1946 and at the time of re-entry of employment he received a salary of \$213.00 a month. It likewise shows that Highway Policemen having the same

classification as Mr. Archer received an annual salary of \$2,556.00 during the year next preceding June 18, 1946.

On this record we make the following findings:

That at the time of the accident employer and employee were operating under the provisions of the Workmen's Compensation Act of this State and notice of the accident and claim for compensation were made within the time required by Section 24 of the Act; that the accident arose out of and in the course of decedent's employment.

The claimant is entitled to an award under the Workmen's Compensation Act in the amount of \$5,340.00 as provided in Paragraph (A, H & K) of Section 7 of said Act.

An award is therefore made in favor of the claimants, Merna Mae Archer, widow, and Judith Mae Archer, minor child, of deceased in the sum of \$5,340.00.

Of this amount the sum of \$378.00 accrued on November 12, 1946 and is payable forthwith. The remainder amounting to the sum of \$4,962.00 is payable in weekly installments of \$18.00 per week beginning November 19, 1946 for a period of 275 weeks with an additional final payment of \$12.00.

All future payments being subject to the terms and conditions of the Workmen's Compensation Act, jurisdiction of this cause is specifically reserved for the entry of such orders as may from time to time be necessary.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

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(No. 3979—Claimant awarded \$47.22.)

CARL S. JOHNSON, Claimant, vs. STATE OF ILLINOIS, Respondent.

*Opinion filed November 12, 1946.*

CARL S. JOHNSON,<sup>4</sup> pro se.

GEORGE F. BARRETT, Attorney General, for respondent.

*SUPPLIES—lapse of appropriataon out of which could be paid—before presentment of bill—sufficient unexpended balance in appropriataon—when award for value may be made.*, Where it clearly appears that claimant furnished supplies or rendered services to the State, for which an appropriation existed out of which payment could be made therefor, an award may be made for reimbursement or payment for said supplies or services where such appropriation' lapsed before payment was made for same, and sufficient unexpended balance therefor remains therein, on claim filed in reasonable time.

DAMRON, J.

During the period January 5, 1944 to January 29, 1944 inclusive, the Division of Highways and the Department of Conservation purchased and received gasoline and lubricating oil of the value of \$47.22 from the claimant, Carl S. Johnson, who on those dates was operating Johnson's Pure Oil Filling Station at Broadway and Benton Streets in Aurora, Illinois as per the bill of particulars filed herein and made a part of this record.

The Department of Public Works and Buildings, Division of Highways has filed a report herein dated August 16, 1946 which shows the purchases were made and goods delivered as to date, sales number, department and amount as alleged in the complaint and also shows that the invoices (sales tickets) were not presented for payment by the claimant before the appropriations and funds from which these invoices were payable had lapsed.

The complaint alleges that this claimant was inducted into the United States Military Service on January 31, 1944 and was not discharged therefrom until

February 8, 1946 and for that reason he was unable to present the vouchers before the appropriation lapsed.

This Court has repeatedly held that where materials or supplies have been properly furnished to the State, and a bill therefor has been submitted within a reasonable time, but the same was not approved and vouchered for payment before the lapse of the appropriation from which it is payable, an award for the reasonable value of the supplies will be made, where, at the time the expenses were incurred there were sufficient funds remaining unexpended in the appropriation to pay for the same.

*Rock Island Sand & Gravel Co. vs. State*, 8 C. C. R. 165; *Oak Park Hospital vs. State*, 11 C. C. R. 219; *Yourtee-Roberts Sand Co. vs. State*, 14 C. C. R. 124.

This case comes within the rule above set forth.

An award is therefore entered in favor of claimant for the sum of \$47.22.

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(No. 3982—Claimant awarded \$83.75.)

MERIAM EVANS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed November 12, 1946.*

RALPH W. CHOISSER, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

**HIGHWAYS—damage—automobile** of claimant damaged by tractor mower operated by employee of State—when award for damages therefor may be made. Where it appears that employee of the State operated a tractor mower on the highway, cutting weeds along the shoulders thereof, so negligently and carelessly as to cause it to overturn on embankment, and fall on claimant's automobile which she was driving on said highway—there is a failure of duty on the part of the State and the law attaches to such failure of duty the charge of negligence. *Miller vs. Kresge Co.*, 306 Ill. 104.

ECKERT, C. J.

On June 17, 1946 the claimant, Meriam Evans, was driving her automobile in a southerly direction on U. S. Route No. 45 in White County, Illinois; she was driving about twenty-five miles per hour; Gordie Mills, an employee of the respondent, was operating a tractor mower on the highway, cutting weeds along the shoulders. This route is maintained by the respondent through the Division of Highways. As claimant approached a relatively deep cut out section of the pavement, her car was overtaken by the motorized mower; the mower was so negligently and carelessly driven and operated that it overturned on the embankment, and fell upon her automobile, causing property damage in the amount of **\$83.75.**

The record consists of the complaint, a departmental report which substantially corroborates the complaint, a stipulation that the departmental report constitute the record, and waiver of statement, brief and argument by both claimant and respondent.

The record shows a duty on the part of the defendant, and a failure to perform that duty, and a resulting injury. The law attaches to such failure of duty the charge of negligence. (*Miller vs. Kresge Co.*, 306 Ill. 104.)

An award is therefore entered in favor of the claimant in the amount of **\$83.75.**

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(No. 3776—Claimant awarded	\$1,117.20
	2,754.80
	<hr/>
	<b>\$3,872.00.)</b>

GEORGE IREY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed January 14, 1947.*

**W. K. KIDWELL** and **JOHN W. FRIBLEY**, for claimant.  
**GEORGE F. BARRETT**, Attorney General and **C. ARTHUR**

NEBEL, Assistant Attorney General, of counsel, for respondent.,

WORKMEN'S COMPENSATION ACT—*employee of Division of Highways within provisions of—where an award for complete loss of vision of left eye is justified.* Where employee of State sustains accidental injuries, arising out of and in the course of his employment, resulting in the complete loss of vision of his left eye, an award may be made therefor under the provisions of the Workmen's Compensation Act upon compliance by the employee with the requirements thereof.

SAME—*when an award of pension for life may be made under.* Where an employee sustains injuries resulting in the complete and permanent loss of vision in both eyes, he is permanently disabled by reason of being industrially blind and is entitled to compensation therefor as provided in Paragraph (f) of Section 8 of the Workmen's Compensation Act and also pension for life after said payments are fully made.

DAMRON, J.

This claim comes up for consideration under the second amended complaint filed in this Court on December 21, 1943.

The record discloses that this claimant was first employed by the respondent in the Division of Highways on April 20, 1942 as a common laborer at a wage of 55c per hour and continued in that classification and at that rate throughout the period of his employment. This claimant, and other similarly employed, worked for the Division less than 200 days a year. Eight hours constituted a normal working day.

On August 5, 1942 at 2 o'clock P. M., the claimant was one of the maintenance crew engaged in placing concrete patches on a state highway in the village of Areola, Douglas County. He was assigned the duty of putting cement in the loading skip of a concrete mixer. The skip dropped from a raised position, and claimant alleges that cement dust was blown into his eyes by reason of its falling. He reported the accident to his immediate superior on the same day, but continued to work until

August 13. On August 14th, claimant went to Doctor Albert Tower Summers of Mattoon, Illinois, who treated claimant's left eye until October 15th. He was then sent by the respondent to Doctor E. E. Findley, Professor of Ophthalmology, University of Illinois, College of Medicine, Chicago, Illinois.

This claimant was paid compensation from August 14th to October 17th inclusive at a rate of \$9.15 a week or a total of \$84.96. Compensation was then terminated on the last mentioned date for the reason Doctor Findley had reported: "I feel that this condition in the left eye was not due to the injury but to some systemic condition which caused a violent inflammation."

The respondent paid the following accounts for services rendered to the claimant : Doctor Albert Tower Summers, Mattoon, \$52.50; Doctor E. E. Findley, Chicago, \$10.00; Y. M.-C. A. Hotel, Chicago, 69c, and Illinois Central Railroad Company, \$6.85, making a total of \$70.04.

The Division of Highways filed a report on March 15, 1943 which shows that on August 18, 1942 Doctor Albert Tower Summers reported to the Division as follows :

"Nature of injury — emment dust in the eye as stated above. When first seen August 14, there was severe inflammation of the entire globe, hemorrhage has occurred in the anterior chamber. The vision-of eye has-been lost in my opinion. Light perception only."

The claimant thereafter continued to be treated by Doctor Summers who again on September 3, 1942 reported to the Division as follows:

"Nature of injury — hemorrhage into the anterior chamber. Very severe eye inflammation. Eye is clearing up slowly and looks very encouraging as of September 1, 1942."

And on October 15, 1942 Doctor Summers again reported to the Division as follows:

"Eye examination and treatment August 13, 1942. Entire globe of eye very much inflamed. Blood in the anterior chamber. Pupil contracted. Lens very cloudy. Could not see fundus. Eye ball very sensitive to pressure and to light. All as a result of cement dust in the eye some days before."

On October 16, 1942 Doctor Fiiidley sent the following report to the Division:

"Mr. George IreY gives a history of an injury to the right eye in 1925. Pupil is small and completely bound down to the capsule of the lens. No light perception. Evidently the sight was destroyed by severe inflammation of iris and ciliary body.

No treatment would improve condition.

History of cement dust in the left eye on August 5, 1942, and examination shows the remains of a serious inflammation of the same tissues as in the right eye.

Vision: 110/200. The pupil is rigid and numerous deposits of iris pigment are found on the lens capsule. The details of the fundus are blurred by the cloudiness of the lens. I feel that this condition in the left eye was not due to injury but to some systemic condition which caused the violent inflammation. I would suggest a thorough systemic examination in his case."

Evidence was taken in Mattoon on September 27, 1945 and filed in this Court on November 13, 1945. Claimant testified that in November 1925 he was employed by the United States Engineers on Lock and Dam project No. 53 on the Ohio River near Cairo, Illinois and while working as a laborer unloading coal, a piece of coal struck his right eye; that he returned to his home at Mattoon where he was treated for this injury by Doctor C. B. Voight, an eye specialist; that the United States Government paid to him medical, hospital and surgical services, and compensation, the exact amount of which he did not know but that payment for partial loss of use of the right eye was paid to him in approximately the sum of \$600.00; that in November 1941, while he was at work for the VanCamp Stokeley Company of Indianapolis, Indiana, manufacturers of canned food, vinegar brine was

splashed in his right eye, and that the Liberty Mutual Insurance Company, the workmen's compensation insurer of his employer under the Indiana Compensation Act, paid the sum of \$561.00 to him plus the necessary first aid and medical services. Claimant further testified that the accidents to his right eye in November, 1925, and November, 1941 resulted in the total and complete loss of vision in his right eye, and that by reason of the accident to his left eye on August 5, 1942 while employed by the respondent, he has suffered total industrial blindness and is now permanently incapable of working.

He therefore seeks an award for complete and total disability under Section 8 Paragraph (f) of the Workmen's Compensation Act.

Claimant called Doctor Florentine Barker Jones, an eye, ear, nose and throat specialist who testified he first examined the claimant on January 14, 1943 and again on June 8, 1945; he found his left eye heavily scarred, on the corner, fixed cloudy pupil, adhesions of iris, and no practical vision and no accommodation of the pupil. He testified he also examined the right eye and found claimant had no practical vision in that eye and that he was suffering from industrial blindness. He also testified that the loss of visual acuity was not due to any systemic condition.

On cross examination he testified that an operation on the left eye would not restore the vision unless the fundus was normal. This he could not ascertain because it was impossible to get back through the rays of the eye on account of the fixed pupil. He further testified that an operation was attempted on the right eye in 1944 by key-hole optical iridectomy which was unsuccessful excepting possibly a little more light perception and projection were obtained.

Upon consideration of this record we find; that on the 5th day of August 1942, the said George Ireby and the respondent were operating under the provisions of the Workmen's Compensation Act of this State; that on said date he sustained accidental injuries which arose out of and in the course of his employment; that notice of the accident was given to said respondent, and claim for compensation on account thereof was made within the time required by the provisions of Section 24 of said Act; that the annual earnings of the claimant during the year next preceding the accident was, \$880.00, and his average weekly wage was **\$16.92.**

That claimant, having lost the complete vision of his left eye, is entitled to have and receive from said respondent the sum of \$9.31 per week for a period of 120 weeks, as provided in Section 8, Paragraph (e-16) of the Workmen's Compensation Act, as amended, amounting to the sum of \$1,117.20.

That respondent in addition thereto shall pay into the Special Fund, provided for in Paragraph (e), Section 7 of said Act, the sum of \$100.00 as provided for in Sub-paragraph 20, Paragraph (e) of Section 8 of said Act, as amended.

The Court further finds that said claimant previously suffered a complete and permanent loss of vision in his right eye in an accident which occurred in November of 1941 while employed by the Van Camp Stokeley Company, and by reason of the provisions contained in Sub-paragraph 18, Paragraph (e) of Section 8 of said Act is now permanently disabled by reason of being industrially blind, and is entitled to compensation as provided in Paragraph (f) of Section 8 of said Act, and also pension for life after said payments are fully made;

Therefore, said claimant is entitled to have and to

receive from the Special Fund as aforesaid the sum of \$9.31 per week for a period of 295 weeks, and one final payment of \$8.35, which said payments shall begin after said respondent has paid to said claimant the total sum, of \$1,117.20, that being the amount of money claimant is entitled to receive from said respondent. Claimant is further entitled to receive from the Special Fund a pension during life annually in the sum of \$464.64, payable in twelve equal monthly installments of \$38.72, as provided in Paragraph (f) of Section 8 of said Act as amended, for the reason that the disablement sustained resulted in said claimant becoming totally and completely incapacitated for work.

The Court finds that the above sum of \$1,117.20 awarded to claimant for the loss of his left eye has accrued and is payable forthwith from the Road Fund. The Court further finds that of the sum of \$2,754.80 to be paid to claimant out of the Special Fund as aforesaid that the amount of \$1,042.72 has accrued to January 16, 1947, and is payable forthwith in a lump sum.

Awards are entered accordingly.

This award is subject *to* the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

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(No. 3854—Claim denied.)

IVΔ BELLE BENNER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed January 14, 1947.*

A. C. LEWIS, for claimant.

GEORGE F. BARRETT., Attorney General ; C. ARTHUR NEBEL, Assistant Attorney General, of counsel, for respondent.

WORKMEN'S COMPENSATION *am — court without jurisdiction to hear claim under — where no claim made or application filed for compensation within time fixed in Section 24.* Where no claim is made for compensation, nor any application filed for same, within time fixed in Section 24 of the Workmen's Compensation Act, the court is without jurisdiction to proceed with a hearing on application filed thereafter.

DAMRON, J.

On February 25, 1942 the above named claimant through her attorney filed an application for benefits under the Workmen's Compensation Act.

The complaint alleged that on or about the 2nd day of January 1941, claimant was injured by reason of an accident arising out of and in the course of her employment at the Chicago State Hospital, 6500 Irving Park Road, Chicago, Illinois.

On November 10, 1943 after due notice had been served on the attorney for the claimant, the above claim was dismissed for want of prosecution and on January 12, 1944 a motion of ~~claimant~~ to vacate the above order dismissing said case was denied for lack of proper showing on the part of said claimant.

On December 2, 1943 claimant filed a petition for reinstatement of said cause heretofore dismissed for want of prosecution. On December 8, 1943, respondent filed its answer thereto and on January 12, 1944 claimant's motion to reinstate said cause was denied by this Court.

On May 25, 1944 claimant, through her attorney, filed a new claim alleging the same facts as contained in the original complaint. This claim was filed under the Limitation Act, Chapter 83, Paragraph 24a, Illinois Revised Statutes. The Attorney General filed a motion on behalf of respondent to dismiss this complaint alleging that the statute of limitation relied upon by said claimant (Section 83, Paragraph 24a) does not apply to cases under the Workmen's Compensation Act.

Section 8 of an Act to create the Court of Claims, and to prescribe the powers and duties, approved July 17, 1945, provides:

The Court shall have jurisdiction to hear and determine the following matters:

D. All claims against the State for personal injuries or death arising out of and in the course of the employment of any State employee and all claims against the Board of Trustees of the University of Illinois for personal injuries or death suffered in the course of, and arising out of the employment by The Board of Trustees of the University of Illinois of any employee of the University, the determination of which shall be in accordance with the substantive provisions of the Workmen's Compensation Act or the Workmen's Occupational Diseases Act, as the case may be.

It is to be noted that this Court under this section of the law, creating this Court, is directed to determine questions arising under the Workmen's Compensation Act by applying the substantive provisions of the Act.

Section 24 of the Act prescribes the limit of time in which an action may be brought to fix liability for accidental injuries and, in so far as applicable to the present inquiry, provides as follows:

"Provided, that in any case unless application for compensation is filed with the Industrial Commission within one year after the date of the accident, where no compensation has been paid, or within one year after the date of the last payment of compensation, where any has been paid, the right to file such applications shall be barred." The filing of a claim for compensation under the Workmen's Compensation Act is jurisdictional and a condition precedent to the right to maintain a proceeding under the act. *Black vs. Industrial Commission*, 393 Ill. 187.

This complaint shows on its face that it was filed in this Court more than three years after claimant's alleged injury, therefore, this Court is without jurisdiction to

hear and determine the issue raised by this complaint.

For the reasons assigned the motion of the Attorney General to dismiss is hereby allowed.

Complaint dismissed.

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(No. 3936—Claim denied.)

JAMES EDWARD GARVIN, Claimant, vs. STATE OF ILLINOIS,  
Respondent.

*Opinion filed Janiary 14, 1947.*

JAMES E. LONDRIGAN, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, of counsel, for respondent.

WORKMEN'S COMPENSATION ACT—*compensation under only authorized for accidental injuries sustained in the course of employment—when failure to show, presence at scene of accident was within his required duties bars an award.* Where claimant fails to show by a preponderance of the evidence that his duties as a watchman require him to be at the place and time the alleged accident occurred and the consequent injuries were sustained, no award is justified.

SAME—*failure to prove a causal connection between conditions existing in the employers premises and the injury to employee, and that accident had its origin in some risk connected with or incidental to the employment—bars any award.* Where evidence shows that claimant's trip to the fourth floor of the building where the accident allegedly occurred was purely personal—it cannot be said that the injury to the claimant flowed as a rational consequence from any risk peculiar or incidental to his employment.

SAME—*burden of proof is on claimant.* No award can be based upon imagination, speculation or conjecture, 'or upon a choice of two views equally co'mpatible, with the evidence.

DAMRON, J.

This is a claim under the Workmen's Compensation Act for injury alleged to have been sustained by the above claimant during the course of his employment for the respondent on the 20th day of April 1945.

The record discloses that this claimant, a man of 82 years of age, had been an employee of the Secretary of State for a number of years prior to said accident. He was a watchman at the south door of the basement in the Capitol Building at Springfield, and as far as the record is concerned he had no other duties in any other part of said Capitol Building,

On the last mentioned date claimant testified that he left the place of his employment in the basement and was showing one Charles Heelen the location of his superior officer's office on the fourth floor of the Capitol Building and while returning to his post he slipped and fell backward at or near the concession stand which is located on said floor.

The record in this case consists of the complaint, the original and supplemental departmental reports of the Secretary of State, the transcript of evidence and the statement, brief and argument for claimant and respondent.

Claimant testified that as a result of said injuries sustained at the place and time aforesaid he received a concussion of the brain, multiple contusions about the body, particularly the pelvis, and was unable to stand or walk. He testified he had pains throughout his limbs for a period of 12 weeks and that since said accidental injury he is unable to resume his employment and that as a result of needed medical attention has incurred bills as follows: St. Johns Hospital, Springfield, Illinois, \$891.35; Doctor John J. Donovan, Springfield, Illinois, \$350.00.

Doctor Donovan was called as a witness on behalf of claimant and testified that claimant has improved since the date of the accident but because of age and probably from the shock of the accident, claimant will not be able

to work. Upon cross-examination he was asked regarding the condition of the claimant other than to bruises and contusions and answered that claimant could not coordinate mentally or physically and explained that this was the result of the concussion. He then testified that claimant had entirely recovered from the concussion and further that all of the bruises and contusions sustained by claimant had healed, but that the claimant still suffered pain. However he testified that the diagnosis of pain was based wholly on subjective symptoms and could not be sustained objectively. On redirect-examination this physician, testified that in a man of claimant's age it could not be determined whether or not he had recovered from the shock of the injury.

The medical testimony in this case is unsatisfactory and from it this Court is unable to determine whether or not claimant suffered any permanent effect as a result of the accident. If claimant had succeeded in proving by competent evidence that he had suffered permanent disability from the injuries sustained as aforesaid it yet would be required of him to show by a preponderance of the evidence that his duties as watchman of the south door of the Capitol Building required him to be on the fourth floor of said building at the time he was alleged to have been injured. This he has failed to do.

The Workmen's Compensation Act requires that an accidental injury, to be compensable must arise out of and in the course of the employment. These phrases are used conjunctively in the statute. *Illinois Country Club Inc. vs. Ind. Corn.*, 378 Ill. 484; *Farley vs. Ind. Com.*, 378 Ill. 334; *Great American Indemnity vs. Ind. Corn.*, 367 Ill. 241; *Borgson vs. Ind. Com.*, 368 Ill. 188; both elements must be present at the time of the injury in order to jus-

tify compensation. *Illinois Country Club Inc. vs. Ind. Corn. supra*; *Mazursky vs. Ind. Corn.*, 364 Ill. 445.

It has been often said by this Court that liability under the Workmen's Compensation Act cannot rest upon imagination, speculation or conjecture, or upon a choice of two views equally compatible with the evidence. *Mandell vs. State*, 12 C. C. R. 49; *Lyman vs. State*, 14 C. C. R. 173; *Elliot vs. State*, 14 C. C. R. 222.

There must be a causal connection between the conditions existing on the employers premises and the injury to the employee, and the accident must have had its origin in some risk connected with or incidental to the employment. *Cummings vs. Ind. Corn.*, 389 Ill. 356.

It appears from the evidence that this employee's trip to the fourth floor of the Capitol Building was purely personal and therefore it cannot be said that the injury to claimant flowed as a rational consequence from any risk peculiar or incidental to his employment, *City of Chicago vs. Ind. Corn.*, 292 Ill. 406, and, therefore, it is not compensable. His claim for compensation must be denied.

Likewise since this claimant has failed to prove his right to compensation as above indicated, his claim for medical and hospitalization must be denied.

Award Denied.

An invoice-voucher has been filed in this case showing that Harry L. Livingstone, a court reporter, Springfield, Illinois was employed to take and transcribe the testimony in this case.

The Court finds that the charges are fair, reasonable and customary for the amount-of work performed by said reporter.

An award is therefore entered in favor of Harry L.

Livingstone, 1008 Ridgely Building, Springfield, Illinois, in the sum of \$46.00.

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(No. 3953—Claimant awarded \$2,900.16.)

'**LUCY PENNINGER**, Claimant, vs. STATE OF ILLINOIS, Respondent.

*Opinion filed January 14, 1947.*

**R. WALLACE KARRAKER**, for claimant.

**GEORGE F. BARRETT**, Attorney General and **C. ARTHUR NEBEL**, Assistant Attorney General, for respondent.

**WORKMEN'S COMPENSATION ACT**—*attendant at Anna Xtate Hospital within provasions of—when an award for compensataon for permanent partial loss of use of left leg—is justified.* Where an attendant at Anna State Hospital sustains accidental injuries, arising out of, and in the course of her employment, resulting in permanent partial loss of use of her left leg—an award may be made for compensation therefor in accordance with the provisions of the Act, upon compliance with the terms thereof and proper proof of claim for same.

**ECKERT, C. J.**

On December 28, 1944, the claimant, Lucy Penninger, an attendant at the Anna State Hospital, slipped and fell on an icy pavement, sustaining a fracture of the left femur. She was hospitalized at the institution from the date of the injury until April 15, 1945, when she returned to her home. Subsequently she received treatment at the West Frankfort U. M. W. of A. Medical and Relief Association, at West Frankfort, Illinois, and there submitted to an operation. All hospital and medical services were paid by the respondent except the charges incurred at the West Frankfort Hospital in the amount of \$295.00.

At the time of the accident claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this state, and notice of the accident and claim for compensation were made within the time provided by the act.

At the time of the injury claimant's annual earnings were \$1,500.00 per year. She was paid by respondent, on account of temporary total disability, the total sum of \$500.00. She alleges that she has become totally and permanently disabled as a result of this injury. The respondent, however contends that the claimant is not totally and permanently disabled, that her injury is limited to the left leg, and that claimant has sustained a specific loss only.

Claimant, testifying on her own behalf, stated that since the injury she has been unable to do anything except dry dishes, peel potatoes, or "a few things sitting down,;" that her feet become very tired when she stands; and that she can not walk without a crutch. She also stated that she was seventy-eight years old on the 27th day of May, 1946.

Dr. William A. Baker, testifying on behalf of claimant, stated that he is a member of the Medical Staff of the Anna State Hospital; that he saw claimant immediately after the accident, and upon examination found about a two inch shortening of the left leg, eversion of the left foot, and considerable pain in the left hip, X-rays showed a complete transverse fracture through the surgical neck of the left femur with proximal fragments downward and backward and distal fragments upward and forward. He stated that an attempt was made to set the bones and insert a Smith-Peterson pin. The operation, however, was not successful, and the pin had to be removed. Dr. Baker also testified that claimant does not have a strong callus formation, but a fibrous union, and that since the bones are not end to end there will never be a strong callus formation. He stated that the condition is permanent, and that in his opinion "it is very nearly a total disability in that she cannot put much

weight on her leg without the use of a crutch or cane.”

Dr. C. D. Nobles, called as a witness for claimant, substantiated the statements made by Dr. Baker.

Claimant was temporarily totally incapacitated from December 28, 1944 to June 28, 1945 or a period of twenty-six weeks. Claimant's annual earnings being \$1,500.00, her average weekly wage was \$28.85, so that her compensation rate is \$14.43. The injury having occurred subsequent to July 1, 1943, this must be increased  $17\frac{1}{2}\%$ , making the total compensation rate \$16.96. Claimant was therefore entitled, on account of temporary total disability, to the total sum of \$440.96. Since claimant received the sum of \$500.00 for non-productive time, there has been an over-payment of \$59.04, which must be deducted from any award in this case.

The court is of the opinion that claimant has sustained a 90% permanent loss of use of her left leg. The court is also of the opinion that claimant is not totally and permanently disabled within the meaning of the Workmen's Compensation Act. There is nothing in the record to show that claimant has sustained any injury other than that to the left hip and leg, and there is nothing to show that she suffers from any disability other than the partial loss of use of her left leg, and her advanced age.

Claimant, is, therefore, entitled to an award of \$16.96 for a period of 171 weeks, or the aggregate sum of \$2,900.16. From this must be deducted the overpayment of \$59.04, leaving a balance of \$2,841.12. She is also entitled to be reimbursed in the sum of \$295.00 expended on account of necessary medical, surgical, and hospital services.

The testimony on hearing before Commissioner Jenkins was transcribed by Ruth A. Coffman, who has sub-

mitted a statement of \$11.50 for her services. This charge is reasonable and proper.

An award is, therefore, entered as follows:

To Ruth A. Coffman, on account of stenographic services, \$11.50, payable forthwith.

To Lucy Penninger, on account of money expended for medical, surgical, and hospital services, \$295.00, payable forthwith.

To Lucy Penninger for 90% loss of use of her left leg, **\$2,841.12** payable as follows:

**\$1,373.76**, which has accrued, is payable forthwith.

**\$1,467.36** is payable in weekly installments of **\$16.96** per week, beginning January 16, 1947, for a period of 86 weeks, with a final payment of **\$8.80**.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

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(No. 3954—Claim denied.)

EARL BRITT, Claimant, vs. STATE OF ILLINOIS, Respondent.

*Opinion filed January 14, 1947.*

J. KELLY SMITH, for claimant.

GEORGE F. BARRETT, Attorney General and HON. C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

*WORKMEN'S COMPENSATION ACT—court without jurisdiction to hear claim under—where no claim made or application filed for compensation within time fixed in Section 24.* Where no claim is made for compensation, nor any application filed for same, within time fixed in Section 24 of the Workmen's Compensation Act, the court is without jurisdiction to proceed with a hearing on application filed thereafter.

ECKERT, C. J.

In his complaint filed in this case on March 20, 1946 the claimant, Earl Britt, alleges that on September 19, 1941 he was employed by the Department of Public

Works and Buildings of the State of Illinois, in the Division of Highways? as a member of a construction crew engaged in the building of Illinois State Highway No. 37, approximately two miles north of Mound City, Illinois. He further alleges that while grading a built up embankment along the highway, he lost control of the road grading machine. Because of the defective condition of its brakes, the machine went down the embankment and hurled the claimant against a steel dash, fracturing his left knee cap. Following the injury, he received, on account of temporary total disability, covering the period from September 19, 1941 to April 4, 1942, the aggregate sum of \$464.36. He alleges the injury to be permanent? with the result that he has lost 50% of the use of his left leg.

Respondent has filed a motion to dismiss the claim on the ground that it was not filed within one year after the date of the accident, or within one year after the last payment of compensation, in accordance with the provisions of Section 24 of the Illinois Workmen's Compensation Act. That section of the Act provides that the right to file application for compensation shall be barred unless such application is filed within one year after the date of the accident, where no compensation has been paid, or within one year after the date of the last payment of compensation where any has been paid. It has been repeatedly held by the Supreme Court of this State, that compliance with this section is a condition precedent to the right to maintain proceedings under the Compensation Act. *City of Rochelle vs. Industrial Commission*, 332 Ill. 386; *Inland Rubber Co. vs. Industrial Commission*, 309 Ill. 43. The decisions of this court are in like effect. *Scott vs. State*, 13 C. C. R. 163. Furthermore, in claims by State employees for compensation for accidental in-

juries, arising out of, and in the course of their employment, Section 24 of the Workmen's Compensation Act is controlling as to the time within which such claims must be filed. *Scott vs. State*, 12 C. C. R. 36.

The accident in this case having occurred on September 19, 1941, and the last payment of compensation having been made on April 4, 1942, it is obvious that the filing of the complaint on March 20, 1946 is not in compliance with Section 24 of the Workmen's Compensation Act. The court is, therefore, without jurisdiction to make an award.

The motion of the respondent is granted. Case dismissed.

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(No. 3955—Claim denied.)

RACHEL M. ROSS, Claimant, vs. STATE OF ILLINOIS, Respondent.

*Opinion filed January 14, 1947.*

C. G. COLBURN, for claimant.

GEORGE F. BARRETT, Attorney General; and C. ARTHUR NEBEL, Assistant Attorney General, of counsel, for respondent.

*COURT OF CLAIMS—jurisdiction—filing claim for damages to property resulting from construction of highway—within time fixed in Section 22 of the Court of Claims Law—condition precedent to jurisdiction of Court.* Where the claim shows on its face that it has not been filed within the time fixed by Section 22 of the Court of Claims Law, Court is without jurisdiction to proceed with hearing on claim.

DAMRON, J.

This complaint, filed on April 5, 1946 alleges that the claimant is a resident of Cass County and is the owner of certain described real estate consisting of an improved farm with buildings thereon in said county.

The complaint alleges that for many years prior to

September 1921, a public highway was in existence along the north side of claimant's farm. That this public highway was first maintained as a township road; later as a State-Aid road in Cass County; and then on the 21st day of September 1921, a dedication deed was executed by claimant and her husband, now deceased, for some additional right of way along claimant's premises; that said dedication deed was executed for the purpose of assisting in bringing about the construction of a State Bond Issue Route 125 to be paved with (concrete.

The complaint further alleges that at the time said dedication deed was executed, there was a large cattle barn, approximately 120 ft. in length, on the premises of the claimant, which was situated and adjoining the highway mentioned in said dedication deed; pursuant to such deed of dedication, the State of Illinois in 1923 and 1924, improved said highway along and bordering the premises of the claimant and that the construction of said highway was done in a careful and workmanlike manner so that no damage was caused to the earth which supported the large cattle barn above referred to. Thereafter in 1941, the respondent again improved said State Bond Issue Route 125 along the premises of the claimant. In making these improvements, its agents, employees, and servants removed additional earth and dirt from the lateral dirt supporting said barn of claimant. The complaint alleges that this excavation was done in a careless and negligent manner and that in direct consequence of the negligence of the respondent and as a result of the negligence and improper excavation as aforesaid, a large quantity of the soil supporting claimant's building gave way and fell into respondent's excavation; that during the Spring of 1942, the soil, in its weakened condition, caused by the said negligent excavation, was unable to

further support the barn of the claimant, causing the foundation to give way; it alleges the walls were broken and destroyed and the premises were rendered dangerous and unfit for use and that the claimant was compelled to abandon the use of her barn until the same could be repaired several months later.

The complaint further alleges that on August 23, 1944, claimant constructed a concrete foundation wall under said cattle barn incurring a cost of \$631.21 for which she seeks an award.

The respondent, through its Attorney General, files its motion to dismiss the complaint for two reasons:

1. That the cause of action stated in the complaint is based upon alleged damages to an integral part of a parcel of land which was conveyed to the respondent for highway purposes. That said deed, dated July 18, 1940, was based on a good and valuable consideration and was executed prior to the date of the alleged damages.
2. That this cause of action is barred by the statute of limitations.

The complaint shows on its face that the alleged damages to claimant's barn happened in the Spring of 1942. The complaint was filed with the Clerk of this Court on April 5, 1946.

Section 22 of the Court of Claims Law (Ill. Rev. Stat. 1945, Chap. 37, Par. 439.22) prescribes the limit of time in which a claim may be filed in this Court. A claim such as the one before us must be filed within two years after it first accrues.

The complaint shows on its face that more than four years had elapsed from the date of the alleged damages to the filing of the complaint. Therefore, under the law, this Court is without jurisdiction to hear and determine this claim for the reason the statute of limitations had run against it.

Claimant's counsel argues that since the repairs

were not made to the barn until August 23, 1944, that this tolled the statute.

We cannot agree with this statement as being the law.

Having concluded that we are without jurisdiction to hear and determine this claim, it becomes unnecessary to discuss other points raised by the respective counsel.

The motion of the Attorney General is allowed. Complaint dismissed.

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(No. 3965—Claimant awarded \$4,931.08.)

IVA BERTHOLD, Claimant, os. STATE OF ILLINOIS, 'Respondent.

*Opinion filed January 14, 1947.*

CLAIMANT, pro se.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, of counsel, for respondent.

WORKMEN'S COMPENSATION ACT—*employee at the Lincoln State School and Colony, within provisions of, when award may be made under for temporary total disability and permanent partial loss of use of left arm and right hand.* Where employee of State sustains accidental injuries, arising out of and in the course of her employment, resulting in temporary total disability and 60% permanent loss of use of her left arm and 75% permanent loss of use of her right hand, an award for compensation therefor may be made in accordance with the provisions of the Act, upon compliance by the employee with the terms thereof.

DAMRON, J.

Iva Berthold, for more than eleven years has been employed at the Lincoln State School and Colony, an institution conducted and maintained by the respondent through the Department of Public Welfare, near Lincoln, Illinois.

For the past seven years she was a worker in the

laundry of the institution and assisted, supervised, and at times operated machinery used in the laundry.

On December 19, 1945 this claimant was operating a steam presser which was controlled and operated by compressed air. Due to a faulty air line the heavy top board of the presser fell upon her hands and forearms, there being no foot release on the presser she was compelled to remain in that position while live steam flowed through the top portion of the presser upon her hands and arms until she was released by a patient.

Her injuries were treated in the hospital of the institution, where it was found that she was suffering from third degree burns on the dorsal surface of both hands, forearms and fingers. She remained there receiving treatment from the date of the injury until January 10, 1946. She was first attended by Doctor Slakus. Later it was found necessary to perform skin grafting operations. The first operation was performed by Doctor E. C. Gaffney at Lincoln, Illinois. The second operation was performed at the St. Luke Hospital, Chicago, Illinois by Doctor Paul Greeley, a plastic surgeon.

On April 9, 1946, Doctor Greeley made the following report :

"This patient has bilateral dorsal burn scar, contractures on the extensor surfaces of each hand. The contracting scars extend down over the fingers and up over the forearm."

On August 8, 1946 Doctor Greeley again reported as follows :

"Mrs. Berthold has been discharged from St. Luke Hospital. Her grafts have grown completely and her progress to date is satisfactory. There is some tendency to develop some fibrosis beneath the grafts which make for a little wrinkling of the new surface covering. I have advised her to use her hands as much as possible, to soak them in warm water and massage them, following which they should smooth out quite well during the next two or three months."

At the September 1946 term of this Court the claimant appeared before its members for personal observation. We found she had a healed scar approximately six inches long and about two inches wide on the extensor surface of her right hand which commenced at her fingers and extended into the forearm above the wrist. The skin grafting left a scar of a dark brownish color, wrinkled surface and was not pliable. The left hand had a healed scar about nine inches long and about two and one-half inches wide on the extensor surface from the forearm down and involved the first, second, and third fingers. The scars were ugly, the texture of the new grafted skin was leatherlike, considerably wrinkled and she was unable to close her left hand to any extent. These injuries are permanent.

The stipulation entered into between the claimant and the respondent shows that respondent paid all medical and hospital bills for the claimant except the bill of Doctor E. C. Gaffney, First National Bank Building, Lincoln, Illinois, in the sum of \$150.00.

The record discloses that claimant was totally disabled, as a result of her injuries, from December 19, 1945 until June 5, 1946. During this period she was recovering from skin grafting operations performed by Doctor E. C. Gaffney. On the last mentioned date she returned to the institution and was reemployed until July 15, 1946. On that date she was sent to Chicago, Illinois and placed under the care of Doctor Paul Greeley who performed another skin grafting operation which totally disabled her from performing work until October 1, 1946. Claimant therefore was temporarily totally disabled for 34 weeks and 3 days.

The departmental report filed in this cause shows that the annual salary of this claimant for one year next

preceding the injury was \$1,582.49. Therefore her average weekly wage was \$30.43.

On this record we find that the claimant and respondent were on the 19th day of December 1945 operating under the provisions of the Workmen's Compensation Act; that on the date last above mentioned said claimant sustained accidental injuries which arose out of and in the course of her employment; that notice of said accident was given respondent and claim for compensation on account thereof was made on the respondent within the time required under the provisions of said Act.

The Court further finds that the claimant was incapacitated for 34 weeks and 3 days for which she is entitled to temporary total compensation, at \$18.00 per week, amounting to the sum of \$619.71 from which must be deducted the sum of \$563.63 heretofore paid by respondent to claimant during her disability as salary in lieu of temporary compensation leaving a balance due claimant for temporary total disability the sum of \$56.08.

On the basis of the above findings an award is entered as follows:

1. The sum of \$18.00 per week for a period of 135 weeks, as provided in Section 8 Paragraph (e) of said Act as amended, for the reason the injury sustained caused a 60% permanent loss of use of the left arm of claimant, amounting to the sum, of \$2,430.00.

2. The sum of \$18.00 per week for a period of 127½ weeks as provided in Section 8 Paragraph (e) of said Act as amended, for the reason the injury sustained caused a 75% permanent loss of use of the right hand of the claimant, amounting to the sum of \$2,295.00, making a total award for specific injuries received by claimant in the sum of \$4,725.00.

3. The sum of \$56.08 representing the balance due claimant for temporary total compensation.

4. The sum of \$150.00 for the use of Doctor E. C. Gaffney, Lincoln, Illinois.

5. Of these awards amounting to the sum of \$4,931.08 the following amounts are payable forthwith :

\$150.00 for the use of Doctor E. C. Gaffney.

\$ 56.08 due as balance on temporary total compensation.

\$270.00 accrued on specific injuries to January 14, 1947.

, The balance of the award amounting to \$4,455.00 is payable to claimant at \$18.00 per week for 247 weeks, commencing January 21, 1947, with ope final payment of \$9.00.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of Compensation awards to State employees."

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(No. 3969—Claim denied.)

WILLIAM F. THORNTON, Claimant, *vs.* STATE OF ILLINOIS,  
Respondent.

*Opinion filed January 14, 1947.*

CLAIMANT, *pro se.*

GEORGE F. BARRETT, Attorney General and C. ARTHUR NEBEL, Assistant Attorney General, of counsel, for respondent.

WORKMEN'S COMPENSATION ACT—*claim for damages to personal property caused by a third party, not compensable under.* Where an attendant at Elgin State Hospital was struck in the mouth by an inmate resulting in the breaking of the upper dental plate of the claimant a claim for compensation therefor must be denied for the reason that claims for damages to personal property caused by the wrongful act of a third person are not compensable under the Workmen's Compensation Act. *Mowery vs. State*, 11 C. C. R. 18.

**DAMRON, J.**

The claimant alleges that while on duty as an attendant at the Elgin State Hospital, he was struck in the mouth by an inmate, breaking the upper dental plate of the claimant. Thereafter, the claimant had a new plate made at a cost of \$75.00. He now files this claim for an award in the above amount to reimburse him for this expenditure contending that inasmuch as this dental plate was broken in the course of his employment for the respondent, and due to the fact that it had been the custom of the Department of Public Welfare, for several years past, to reimburse employees in welfare institutions for the amount of costs for the replacement of glasses; that from this practice he believes the Department of Public Welfare should assume the responsibility of his broken dental plate.

The respondent files its motion to dismiss for the reason that a cause of action is not stated in the complaint and that it being a claim for damages to personal property, caused by a third party, the claim is not compensable under the Workmen's Compensation Act and therefore respondent insists that this claim should be dismissed.

Damages for injury to personal property cannot be recovered under the provisions of the Workmen's Compensation Act. In *Mowery vs. State*, 11 C. C. R. 18 was a claim filed to recover from the respondent for glasses which were broken during the course of his employment for respondent. In dismissing this claim on motion of the Attorney General, the Court said,

"There is no law in this State making respondent liable for damage to the personal property of an employee, where such damage is caused by the wrongful act of a third person, and consequently the motion of the Attorney General to strike must be sustained."

The motion to dismiss this complaint is therefore granted.

Complaint dismissed.

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(No. 3971—Claimant awarded \$4,800.00.)

ANNA M. RATEGAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed Janiary 14, 1947.*

BENNETT & COLBACH, (MR. JOHN W. BENNETT, of counsel), for claimant.

GEORGE F. BARRETT, Attorney General; WM. L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*employee of Department of Revenue within provisions of—when award may be made for death of, under.* Where employee of the Department of Revenue sustains accidental injuries, arising out of, and in the course of his employment, resulting in his death, an award for compensation therefor may be made to those legally entitled thereto, in accordance with Section 7 (a) of the Workmen's Compensation Act, upon compliance with the requirements thereof and proper proof of claim therefor.

ECKERT, C. J.

Claimant, Anna M. Rategan, is the widow of William F. Rategan, deceased, formerly employed by the Department of Revenue as a Field Auditor Supervisor. The deceased made audits at times and places designated by the Department, and had direct supervision of a large field staff. With the approval of the Department, he used his own automobile for transportation.

On March 12, 1946, by pre-arrangement, Matthew A. Berg, a member of the Field Staff, met the deceased at the Rategan home a little before 8 o'clock in the morning. The men were scheduled for work together on a special assignment. When the decedent went to the garage to get his automobile, the engine would not start. He attempted to push the car from the garage, and was

found by Mr. Berg, leaning against the car and breathing very rapidly. With Berg's assistance, he rested in the car for five or ten minutes, and then suggested, although he was not well, that they should proceed with their assignment.

Berg then pushed the Rategan car, with Rategan driving, to a local garage, and the two men started for work in the Berg car. Rategan was still breathing heavily, and when they reached Douglas Park, Berg insisted Rategan lie on a bench and rest. After a half hour rest, Berg took Rategan home despite Rategan's protest.

Dr. John J. Gearin, called as a witness on behalf of claimant, testified that when called to the Rategan home, he found the deceased desperately ill. His breathing was very rapid; his pulse was rapid and irregular; and he was having considerable pain over the region of the heart. It was the doctor's conclusion that the deceased was suffering from a severe acute heart attack. Dr. Gearin stated :

"I came to the conclusion this attack was brought on by attempting to move his car, superinduced by exertion, attempting to move the car from his garage by himself, marked undue exertion, which is a very common thing."

Dr. Gearin ordered the patient hospitalized immediately, and placed in an oxygen tent. Rategan, however, died on March 24, 1946.

The court finds that the death of William F. Rategan was due to an accidental injury. (*Carson-Payson Co. vs. Industrial Comm.*, 340 Ill. 632.) At the time of the injury the employer and employee were operating under the provisions of the Workmen's Compensation Act of this state, and notice of the accident and claim for compensation were made within the time provided by the act. The accident arose out of and in the course of 'decedent's

employment. Decedent's earnings during the year immediately preceding his death were \$3,960.00.

Claimant is entitled to an award under Section 7 (a) of the Workmen's Compensation Act in the amount of \$4,000.00. The death having occurred as a result of an injury sustained after July 1, 1945, this amount must be increased 20%, or \$800.00.

The testimony on hearing before Commissioner East was transcribed by A. M. Rothbart & Associates, who have submitted a statement of \$32.70 for their services. This charge is reasonable and proper.

An award is therefore made in favor of the Claimant, Anna M. Rategan, in the amount of \$4,800.00, to be paid to her as follows:

\$ 756.00, which has accrued and is payable forthwith.

4,044.00, which is payable in weekly installments of \$18.00 per week, beginning January 13, 1947, for a period of 224 weeks with an additional final payment of \$12.00.

An award is also made in favor of A. M. Rothbart & Associates for stenographic services in the amount of \$32.70, which is payable 'forthwith.'

All future payments being subject to the terms and conditions of the Workmen's Compensation Act of Illinois, jurisdiction of this cause is specifically reserved for the entry of such further orders as may from time to time be necessary.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State Employees."

(No. 3983—Claimant awarded \$2,500.00.)

HELEN G. NORMAN, Claimant, **vs.** STATE OF ILLINOIS, Respondent.

*Opinion filed January 14, 1947.*

E. E. DENISON and R. W. HARRIS, for claimant.

GEORGE F. BARRETT, Attorney General; and C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

**WORKMEN'S OCCUPATIONAL DISEASES ACT**—*State and all employees of within purview of.* In the absence of the election by the State to provide and pay compensation under Section 4, of the Workmdn's Occupational Diseases Act, a right of action accrues to employees of the State, sustaining injury to health by reason of disease contracted or sustained in the course of her employment and proximately caused by the negligence of the State, under Section 3 of said Act, which provides that violation by an employer of any statute of this State, intended for the protection of the health of employees, shall constitute negligence of the employer within the meaning of the Section.

**SAME—Court of Claims has jurisdiction. to hear and determine claims under Section 3 of.** The Court of Claims acquires jurisdiction to hear and determine claims against the State arising under Section 3 of the Workmen's Occupational Diseases Act—*Wheeler vs. State, 12 C. R. 254.*

**SAME—statute concerning hours of employment of females—intended to protect health of employees—violation of, evidence of negligence under Section 3 of.** A statute providing that no female shall be employed in any public or private institution, or offices thereof, in this State, more than eight hours during any one day, or more than forty-eight hours during any one week is clearly intended for the protection of the health of employees, and a violation thereof by the State constitutes negligence under Section 3 of the Workmen's Occupational Diseases Act, and a cause of action arises in favor of employee against State, where employment was in violation of said Statute, and she sustains injury to her health by reason of disease contracted or sustained in the course of her said employment, as a result thereof.

ECKERT, C. J.

This action is brought under Section 3 of the Workmen's Occupational Diseases Act, (Illinois Revised Statutes, 1943, Chapter 48, Section 172.3), by Helen G. Norman, an employee of the respondent, for damages sustained as a result of contracting tuberculosis while

working as an attendant at the Alton State Hospital, Alton, Illinois. Claimant is a married woman whose husband was in service during the time of her employment by the respondent, is thirty-two years of age, and was first employed by the respondent on February 14, 1944. Prior to that time she was a strong and healthy young woman who had had no serious illness of any kind, and who had been active in the performance of the ordinary duties of a housewife. At the time of her employment she was thoroughly examined by a staff physician at the Alton State Hospital, and was found to be in good health. No evidence of tuberculosis was found at that time in any of the tests which were made.

Every morning during her employment, claimant took a group of patients from wards RCF 1, in fair weather, for a walk out of doors, and in inclement weather, to the recreation room. These patients were extremely violent and combative and deteriorated, and some of them were suffering from tuberculosis. The claimant, while on duty, and in the course of her employment on the grounds and in the recreation room, came in direct contact with these patients. Being insane, they were uncooperative and not able to control their coughing and expectoration. Claimant wore the usual uniform of an attendant at the institution, but was not provided with a special gown or mask of any kind for the covering of the mouth or nose.

Claimant, from the time of her employment in February, 1944, up to and including the summer of that year, also came in direct contact with one Sarah Brown, a patient of ward RCF 1. She took this patient out every day for recreation until the patient was assigned to Maple Cottage, at the institution, a ward for tubercular patients. While she was confined in this ward, the patient died from tuberculosis.

Claimant's regular hours of work were from 8 o'clock in the morning to twelve o'clock noon, and from one o'clock in the afternoon until five o'clock in the afternoon, five days per week, and one-half day on Saturday. Twice each week, after claimant had worked eight hours during the day, she was assigned to work at night, usually Monday night at a card party, and Thursday night at a dance for the patients, a total of more than four hours and thirty-five minutes each week. She thus worked over eight hours in a twenty-four hour period on Monday and Thursday, and worked over forty-eight hours every week while she was employed at the institution.

Shortly before May **24, 1945**, claimant began feeling tired, and experienced shortness of breath. An X-ray picture of her lungs was taken, and she was given a physical examination. Dr. Alfred P. Bay, managing officer of the institution, then called claimant to his office and informed her that the X-rays and the examination indicated she had contracted tuberculosis.

On June **3, 1945**, Dr. Bay ordered claimant to bed, and she was hospitalized at the institution until November **21, 1945**. She still runs a temperature, is still suffering from active tuberculosis, and is unable to perform her ordinary duties as a house wife. She now has household help, sleeps late each morning, and rests each afternoon. Likewise she has not been able to return to her work at the institution, and because of her illness was granted a leave of absence on January **1, 1946**.

All necessary hospital, medical, and nursing services were furnished by the respondent while claimant was hospitalized at the institution. During the year prior to claimant's hospitalization she received a total salary of **\$1,367.00**. Thereafter, for a period of six months, she

received disability compensation in the aggregate amount of \$630.00. In addition to the medical, surgical, and hospital services furnished by the respondent, claimant has expended on her own behalf the sum of \$325.00. She asks damages in the total sum of \$20,000.00.

Dr. Truman G. Drake, called as a witness on behalf of claimant, stated that he examined claimant on January 3, 1946, and took X-ray pictures at that time. He stated that claimant's right lung, anteriorly, was slightly less resonant than the left; and in the left lung, beneath the breast, there were a few moist rales; that gastric washings for tubercular bacilli were negative, but the sedimentation rate was high, indicating a probability of chronic infectious process. The chest X-ray showed a soft opacity in the right lung between the first and second ribs anteriorly, which was interpreted as being a tuberculous lesion. The doctor also testified that subsequent examinations revealed claimant's temperature always slightly above normal; revealed a consistent elevation of the sedimentation rate; and revealed the right upper lobe lesion to be persistent and without marked change. Dr. Drake stated:

"On clinical grounds, we must consider this case one of pulmonary tuberculosis, which still retains enough activity to cause constitutional symptoms and which will require constant and careful observation and treatment for a long period to come."

In a similar case, (*Wheeler vs. State*, 12 C. C. R. 254), it was held that the State of Illinois may properly be made respondent, in the Court of Claims, in an action for damages for injury to health, resulting from a disease contracted by a state employee in the course of his employment, and proximately caused by the State's negligence, under the terms and provisions of the Workmen's Occupational Diseases Act. The State not having elected

to provide and pay compensation under Section 4 of the Workmen's Occupational Diseases Act, the employee has a right of action, under Section 3 of the Act. That section provides that violation by an employer of any statute of this State, intended for the protection of the health of employees, shall constitute negligence of the employer within the meaning of the section.

It is apparent from the record that claimant was frequently required to work more than eight hours during any one day, and more than forty-eight hours during any one week. This was a violation of "An Act Concerning the Hours of Employment of Females in Certain Occupations," (Illinois Revised Statutes, 1943, Chapter 48, Section 5, which provides :

"No female shall be employed . . . in any public or private institution or offices thereof, incorporated or unincorporated in this State, more than eight hours during any one day or more than forty-eight hours in any one week . . ."

The violation of this statute by the respondent was clearly a violation of a statute intended for the protection of the health of employees, and constitutes negligence under Section 3 of the Workmen's Occupational Diseases Act. (*Wheeler v. State*, supra.)

The claimant has met all of the requirements of Section 3 of the Workmen's Occupational Diseases Act, and the record amply sustains the allegations of her complaint. She was confined to her bed for a period of approximately twenty-six weeks during her illness. From the time she left the hospital on November 21, 1945, until the hearing before Commissioner Jenkins, on October 18, 1946, she was unable to perform her usual duties. The disease is still active; her future health is uncertain, and her present physical condition is not that of a normal young woman of the same age. The court is of the

opinion that claimant is entitled to damages under Section 3 of the Workmen's Occupational Diseases Act in the amount of \$2,500.00. An award is therefore entered accordingly.

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(No. 3986—Claimant awarded \$4,800.00.)

LOUISA AMMANN, Claimant, vs. STATE OF ILLINOIS, Respondent.

*Opinion. filed January 14, 1947.*

JAMES M. BYRNE, for claimant.'

GEORGE F. BARRETT, Attorney General and C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

*WORKMEN'S COMPENSATION ACT—employee of Department of Public Works and Buildings within provision of—when award may be made for death of, under.* Where employee of the Department of Public Works and Buildings sustains accidental injuries, arising out of, and in the course of his employment, resulting in his death, an award for compensation therefor may be made to those legally entitled thereto, in accordance with the provisions of the Act, upon compliance with the requirements thereof and proper proof of claim therefor; Section 7 (a) of the Act.

ECKERT, C. J.

Claimant, Louisa Ammann, is the widow of Louis Ammann, deceased, formerly employed by the Department of Public Works and Buildings, Division of Highways, as a laborer. On the morning of June 19, 1946, while standing on the running board of a truck which was being towed, the deceased was thrown from the truck, falling backwards, and striking his head on the pavement. Death occurred five hours later. Ammann was married and left him surviving his widow, the claimant, but no children dependent upon him for support. His earnings during the year immediately preceding his death were \$1,439.05.

At the time of the accident, which resulted in the death of Louis Ammann, the employer and employee were operating under the provisions of the Workmen's Compensation Act of this state, and notice of the accident and claim for compensation were made within the time provided by the act. The accident arose out of and in the course of decedent's employment.

Claimant is entitled to an award under Section 7 (a) of the Workmen's Compensation Act in the amount of \$4,000.00. The death having occurred as a result of an injury sustained after July 1st, 1945, this amount must be increased 20%, or \$800.00.

An award is, therefore, made in favor of the claimant, Louisa Ammann, in the amount of \$4,800.00, to be paid to her as follows:

\$ 498.00, payable in weekly installments of \$16.60 per week, for a period of 30 weeks, which has accrued and is payable forthwith;

\$4,302.00 payable in weekly installments of \$16.60 per week, beginning, January 16, 1947, for a period of 259 weeks, with an additional final payment of \$2.60.

Claimant's petition for a lump sum award is denied.

All future payments being subject to the terms and conditions of the Workmen's Compensation Act of Illinois, jurisdiction of this cause is specifically reserved for the entry of such further orders as may from time to time be necessary.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees. --

(No. 3998—Claimant awarded \$1,200.00.)

LOUIS F. OPEL, vs. STATE OF ILLINOIS.

*Opinion filed January 14, 1947.*

CLAIMANT, pro se.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*employee of Division of Highways. within provisions of, when an award for temporary total and scars and disfigurements may be under. Where an employee of the State sustains accidental injuries, arising out of and in the course of his employment, resulting in temporary total disability and scars and disfigurement of his face and head, due to third degree burns, an award for compensation therefor may be made, in accordance with the provisions of the Act, upon compliance by the employee with the terms thereof.*

DAMRON, J.

On November 9, 1945, this claimant was a member of a group employed by the Division of Highways in Worden, Madison County. The weather was cold, and the battery of one of the trucks assigned to the group did not have sufficient power to start the motor. It was decided to tow the truck behind another. Since the choke was not operating, claimant was ordered to ride the front end of the towed truck and pour gasoline into the carburetor as the truck was pulled as aforesaid. While the claimant was pouring the gasoline as ordered, the motor backfired setting the gasoline in the carburetor on fire and blowing flaming gas out of the carburetor onto claimant and the front of the truck. Claimant's face, neck, head, and hands were covered with burning gasoline and burned.

Claimant was at once taken to the St. Francis Hospital, Litchfield, where he was placed under the care of Dr. Harry A. Yaeger. On July 19, 1946, Dr. Yaeger sent the following report to the Division of Highways:

"Final report and resume of the case of Mr. Louis Opel of Worden, Illinois, a State highway employee.

Mr. Opel sustained extensive first to third degree burns on the entire head, face, and neck on **11-9-45**, a result of a gasoline explosion. Debridement, antiseptic dressings, and shock therapy were carried out in the emergency room at St. Francis Hospital. Penicillin and sulpha drugs by injection were begun immediately. Dressings were left untouched for several days until febrile reaction indicated a change to wet dressings. These were continued up to December 4th, at which time a large graft 6 x 10 cm. was applied between the vertex and the occiput to cover about one-fourth of the total granulating area. Only this part was grafted because of the fact that a moderate amount of infection persisted which did not respond to the penicillin and sulpha drugs. At least **95%** of this grafted area remained viable and grew in good shape. Subsequently on January 17, 1946, the remaining granulating area occupying the left temporal parietal and pre-and-post auricular areas was grafted with a Padgett dermatome split thickness graft. Subsequently it was found that about **85%** of this grafted area remained viable. Repeated attempts to epithelize the residual granulating areas met with difficulty. Various agents including red blood cell powder, **sulfa** and urea powder, silver nitrate, and other usual agents were used. These areas undoubtedly would have responded well to small Thiersch grafts but the patient refused further treatment along this line. **As** a result it was necessary to continue with the above, named agents in the attempt to heal these areas. This was accomplished with considerable difficulty and delay which was previously predicted to the patient. These dressings were applied on an average of four-day intervals. At the present time it is entirely healed. Because of the fact that the patient is bald, there is, fortunately, relatively little disfigurement and in these areas denuded of hair the hair from adjoining areas will suffice to cover to a considerable extent. In spite of the patient's objection to the Thiersch grafts which would have terminated the difficulty of repeated dressings, there is very little scarring evident. The skin has practically normal texture and color, and it is difficult to distinguish the burned and grafted areas from the adjoining skin. I feel that the **end** result may be considered thoroughly satisfactory and disfigurement minimal.

Disfigurement of the right ear is minimal and confined to the helix. The left ear was severely burned particularly along the helix which shows, as you will notice on the picture, a moderate degree of disfigurement. I would estimate about 20% loss of the helix on the right ear and about 50% on the left ear."

The claimant, at the request of the Court was present for observation on January **14**, 1947, at Springfield.

At the time of his injuries, claimant was sixty-two years of age and had no children under the age of six-

teen years dependent upon him for support. He is partially bald. When he is facing you his ears have the appearance of small horns protruding from the upper part of each ear. This is a result of the partial destruction of the helix of each ear. It is more pronounced on the right ear. There is noticeable scar tissue below his chin, on his scalp and above his left ear. These scars are the result of severe third degree burns and are permanent. He will be required to carry them throughout his lifetime.

Considering this record, the medical reports, and our personal observation of the claimant, we find as follows:

That the injuries complained of were received in the course of the employment, that due notice was given respondent as required by Section 24 of the Workmen's Compensation Act; that all necessary medical and hospital expenses amounting to \$967.10 were furnished by respondent; that claimant was disabled from the date of his injuries to March 26, 1946, for which he was paid compensation in the sum of \$200.42; that his earnings for one year next preceding his injuries totaled \$1,330.15; that his average weekly wage was \$25.57 making his weekly compensation rate \$15.35; that the scars and disfigurements received by claimant are compensable.

An award is hereby entered in favor of Louis F. Opel, the claimant, as follows:

The sum of Twelve Hundred (\$1,200.00) Dollars as provided in Section 8, Paragraph (c) of the Workmen's Compensation Act to be paid claimant at the rate of \$15.35 a week. Of this amount the sum of Six Hundred and Forty-Four Dollars and Seventy Cents (\$644.70) has accrued and is payable forthwith in a lump sum. The remainder, amounting to the sum of Five Hundred and Fifty-Five Dollars and Thirty Cents (\$555.30), is pay-

able to claimant at the rate of \$15.35 a week commencing January 21, 1947 for thirty-six weeks with one final payment of Two Dollars and Seventy Cents (\$2.70).

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State Employees."

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(No. 2263—Claim denied.)

**WORDEN-ALLEN COMPANY, A CORPORATION**, Claimant, vs. **STATE OF ILLINOIS**, Respondent.

*Opinion filed March 25, 1947.*

**E. V. CHAMPION**, for claimant.

**GEORGE F. BARRETT**, Attorney General; **C. ARTHUR NEBEL**, Assistant Attorney General, for respondent.

*CONTRACTS*—When claim for extra reimbursement over and above contract price, for expenses incurred and loss sustained by claimant due to delays allegedly caused by State, will be denied—standard specifications for Road and Bridge construction, Division 1, Section 9.7, provides—acceptance of the last payment by contractor shall operate as and shall be a release to the Department from **all** claims **or** liability for anything done **or** furnished, or relating to the work under this contract, **or** for any act or neglect **of** said department relating to **or** connected with said contract. Where it appears that contractor voluntarily agreed to carry out his construction contract, notwithstanding alleged delays of the State in awarding the same, finished the work and did accept and cashed the final voucher issued therefor without reservation, he is precluded by the terms of his contract from claiming additional reimbursement for losses sustained and expenses incurred.

The provisions of Standard Specifications for Road and Bridge Construction—a part of his contract—are controlling. *Henkel Construction Company vs. State*, 10 C. C. R. 538; *Strandberg and Son Co. vs. State*, 13 C. C. R. 49; *Pickus Engineering and Construction Co. vs. State*, 13 C. C. R. 39; *Richardson vs. State*, 14 C. C. R. 3.

**DAMRON, J.**

This cause is now before the Court on motion of the respondent to dismiss the complaint heretofore filed in this cause on November 9, 1933.

The record consists of the complaint, stipulation of facts, reports of the Division of Highways, brief, statement and argument of both claimant and respondent.

From the record we find that the claimant submitted its bid to the Department of Public Works and Buildings, Division of Highways, for the erection of a steel I-Beam Railroad, overhead concrete bridge which was to span the railroad right of way and tracks of the Chicago Great Western Railroad Company in JoDaviess County, Illinois.

According to specifications this construction work was to be completed on or before October 15, **1932**. But due to certain delays on behalf of respondent in negotiating with the Railroad Company, the contract was not awarded to claimant until September **23, 1932**, a period of nearly two months after claimant's bid was submitted. This neglect on behalf of the respondent thereby slowed down the construction work to such an extent that operations on the job did not commence until the middle of October causing construction work to be carried into the cold weather months, therefore the claimant was obliged, according to the standard practice contained in said specifications, to heat materials entering into the concrete and likewise to protect the concrete after it had been poured, all of which increased the cost of construction, not contemplated by the claimant at the time it submitted its bid, and would not have been necessary had the respondent awarded the contract promptly. When the award was finally made, at the request of the claimant, the termination date for the completion of this project was extended by the respondent to December 8, **1932**, and during the course of the construction of said bridge the respondent changed plans and specifications on at least two occasions which caused further delay in its completion.

Claimant contends that as a result of such delays it was caused to expend \$1,295.83 above the contract cost which would have been prevented, had the work been done at a time when claimant had every reason to expect it to be done, with the completion date fixed as October 15, 1932, as it was at the time claimant submitted its bid. Attached to the complaint and made a part thereof is a bill of particulars, supported by affidavit, showing the additional costs incurred by claimant over and above the contract price.

The stipulation of facts shows that final inspection on said project was made on August 18, 1933; that final payment of claimant's estimate was September 16, 1933 and that State Warrant representing said final payment dated September 20, 1933 payable to claimant, in the sum of \$290.99, was endorsed and cashed by said claimant, and that said Warrant is now in the files of the State Auditor in Springfield, Illinois. It is not contended by the respondent that the final warrant cashed by claimant included the extra expenses and costs incurred by claimant.

The respondent files its motion to dismiss the complaint on the ground that the claimant having accepted and cashed the final warrant has thereby given respondent a full release from any and all actions arising out of the contract. The motion is based on the following provision contained in the contract:

Division 1, Sec. 9.7. "The acceptance by the contractor of the last

sustained by it due to delays for which claimant contends respondent is liable.

The evidence in this case shows that claimant was an experienced contractor, was acquainted with the standard specifications as contained in the proposals, and was familiar with Section 9.7 of the "Standard Specifications For Road and Bridge Construction", as adopted by the Department of Public Works and Buildings, January 2, 1932. Yet in the face of this knowledge, claimant continued to permit its bid to stand as filed for nearly two months, and accepted the job after it was awarded to it. Claimant completed the work, cashed the final voucher without reservation, other than letters directed to the Division of Highways during the course of construction. This was an attempt to reserve some purported right although Division 1, Section 9.7 of the Specifications, specifically stated that, "acceptance by the contractor of the last payment shall operate as and shall be a release to the Department from all claims or liability for anything done or furnished, or relating to the work under this contract, or for any act or neglect of said Department relating to or connected with the said contract ,,"

This Court has passed upon contracts including the "Standard Specifications for Road and Bridge Construction", and in claims such as the one before us, have held that final payment under such a contract constitutes a release of all claims and liabilities under the contract and that an award cannot be made, arising out of such a contract, after final payment has been accepted by the contractor. *Henkel Constructors Company vs. State*, 10 C. C. R. 538; *Strandberg and Son Co. vs. State*, 13 C. C. R. 49; *Pickus Engineering and Construction Co. vs. State*, 13 C. C. R. 39; *Richardson vs. State*, 14 C. C. R. 3.

After considering the record before us, we conclude that the claimant has no right of recovery.

The motion of the Attorney General to dismiss the complaint is well founded in law and is therefore allowed.

Complaint dismissed.

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(No. 3330—Claimant awarded \$525.17.)

PATRICK J. DUIGNAN, Claimant, vs. STATE OF ILLINOIS,  
Respondent.

*Opinion filed March 25, 1947.*

VICTOR N. CARDOSI, for claimant.

GEORGE F. BARRETT, Attorney General and WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

**WORKMEN'S COMPENSATION ACT**—*attendant at Manteno State Hospital within provisions of--when an award for disfigurement may be made under.* Where an employee at Manteno State Hospital sustains accidental injuries, arising out of and in the course of his employment, resulting in a permanent disfigurement of face, an award for compensation therefor may be made, in accordance with Section 8(c) of the Act, as amended, upon compliance by employee with the requirements thereof.

**SAME**—*when claim for temporary total, or permanent partial, disability, will be denied.* Where record is insufficient, an award cannot be based upon mere speculation, surmise or conjecture and therefore must be denied.

DAMRON, J.

The complaint was filed November 10, 1938; hearing completed on December 3, 1946 and the transcript filed on December 31, 1946.

No jurisdictional questions are involved. It is stipulated that the claimant and respondent were governed by and operating under the Workmen's Compensation Act and that the accidental injuries arose out of, and in the course of claimant's employment.

The complaint asks that claimant be awarded (1) such compensation for permanent disabilities as the evidence may show he is entitled to receive under the provisions of the Workmen's Compensation Act, and (2) reimbursement of \$357.02 expenses paid and incurred for medical, surgical and hospital treatment at the Mayo Clinic, Rochester, Minnesota; transportation expense to and from claimant's home to Rochester and \$39.52 expenses of eight trips to the Illinois Research Hospital.

The record discloses that claimant, Patrick J. Duignan, on November 12, 1937 was employed by the Department of Public Welfare as an attendant at Manteno State Hospital. His wages were \$52.50 per month, plus maintenance—the value of which is \$24.00 per month.

While watching patients standing in the supper line, claimant was struck and knocked down, without warning, by a patient. He immediately reported to the hospital at the institution where he received emergency first-aid attention and was confined to bed. An x-ray examination revealed claimant had a fracture of the left zygomatic process. He returned to work about a week later and on December 13, 1937 was admitted to the Illinois Research Hospital having been referred there by the officials at Manteno. X-rays disclosed fracture of the left malar bone with downward displacement of the lower orbital ridge, whereupon an operation was performed exposing the zygomatic arch, the arch was lifted by instrumentation and the wound closed. He was discharged on December 22, the hospital report stating, "that while the depression had not been completely removed, yet his appearance was much improved."

Claimant testified he was unable to work following the last operation owing to severe pain in his head.

He was absent from work about three weeks and then

returned and worked another three weeks. He could not recall whether he worked from that time until he went to Rochester in August of the following year. He had been left with a large depression on the left side of his face and in an effort to correct this disfigurement in August 1938, he went to the Mayo Clinic in Rochester where an operation was performed which failed to eliminate the disfigurement.

After leaving the State's employ in January 1938, he requested Dr. Hinton to provide further medical treatment but was merely told that he had been discharged by the Illinois Research Hospital.

He went into business with his father in 1938 but could not recall whether it was before or after going to Rochester. In 1940 he enlisted in the Canadian Army serving three and a half years and then joined the United States Armed Forces where he served in the infantry. No evidence was offered by claimant as to his present occupation or earnings.

It is obvious from this somewhat detailed statement of all the evidence that the record is insufficient to show that claimant, has sustained either temporary total, or permanent partial, disability for which he is entitled to any compensation. Any award given for such disability would necessarily rest upon mere speculation, surmise or conjecture and therefore must be denied. *Cross vs. State*, 13 C. C. R. 174 at 178.

The proof is also entirely too vague to establish claimant's right to reimbursement for the surgical, hospital and other expenses he incurred in connection with his treatments at Rochester, Minnesota or to dispel the reasonable inference that claimant voluntarily elected to obtain these services at his own expense.

Having been referred to the Illinois Research Hos-

pital for further treatment by his superiors at Manteno he is clearly entitled to reimbursement of the \$39.52 transportation expense for the eight trips he was required to make to that institution.

In addition to the above claims resolved as aforesaid, claimant also seeks compensation for the serious and permanent disfigurement to his face. The record, based upon the Commissioner's observation of claimant, described that disfigurement as an indented puckered scar of purplish discoloration approximately 2½ inches long, extending under the orbit of the left eye from the hair line to a point immediately under the pupil of the eye, with a marked depression of the left cheek toward the upper line of the jaw. This disfigurement having remained in this condition for over nine years, there is no good reason to assume there will be any improvement in claimant's condition.

Claimant having suffered disfigurement as a direct result of an accidental injury which arose out of, and in the course of, his employment, he is entitled to an award.

The Commissioner on the basis of his observation recommends that claimant be awarded compensation under Section 8(c) in the sum of \$485.65 computed at the rate of \$8.83 (claimant's weekly compensation rate on the basis of \$918.00 annual earnings including maintenance) for a period of 55 weeks.

An award is hereby entered in favor of claimant in the sum of Five Hundred Twenty Five Dollars Seventeen Cents (\$525.17) which includes \$39.52 transportation expenses incurred in connection with medical and hospital treatment at Illinois Research Hospital and \$485.65 under Section 8(c) of the Workmen's 'Compensation-Act, as amended, for serious and permanent facial

disfigurement, all of which has accrued and is payable forthwith.

A. M. Rothbart, Court Reporting Service, 120 South LaSalle Street, Chicago, Illinois, was employed *to* take and transcribe the evidence in this case and has rendered a bill in the amount of \$24.80. The Court finds that the 'amount charged is fair, reasonable, and customary and said claim is allowed.

This award is subject to the approval of the Governor as provided in Section 3 of, "An Act concerning the payment of compensation awards to State employees".

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(No. 3644 — Claimant awarded \$61.98)

(No. 3645 — Claimant awarded \$88.14)

(No. 3646 — Claimant awarded \$79.00) Consolidated.

(No. 3647 — Claimant awarded \$82.95)

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\$312.47)

ALEXANDER, STEELE, ROBERT MORAN, ROBERT ECKART, ED BLEI-MEHL, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed March 25, 1947.*

HARRY C. KINNE, Chicago, Illinois, Attorney for claimants.

GEORGE F. BARRETT, Attorney General, and WM. L. MORGAN, Assistant Attorney General for respondent.

SUPPLIES—*lapse of appropriation out of whch could be pazd—before presentment of bill—sufficient unexpended balance in appropriation—when award for value may be made.* Where it clearly appears that claimant furnished supplies or rendered services to the State, for which **an** appropriation existed out of which payment could be made therefor, an award may be made for reimbursement or payment for said supplies or services where such appropriation lapsed before payment was made for same, and sufficient unexpended balance therefor remains therein, on claim filed in reasonable time.

**DAMRON, J.**

The above complaints were filed by the respective claimants on October 21, 1941.

The claimants and respondent by their respective attorneys filed a stipulation herein on January 4, 1947, whereby they ask to consolidate the aforesaid claims. It is further stipulated that the record shall consist of the report of the Director of the Department of Conservation dated November 18, 1941.

The evidence as disclosed by the record as above stipulated establishes that each of the claimants during the month of February 1941, and for a varying number of preceding months were, and had been, continuously employed as tree surgeons by the Department of Conservation. Their services were terminated on February 8, 1941. They were employed pursuant to an oral agreement at "a salary of \$125.00 per month, and expenses consisting of room and board and railroad fare to and from their respective places of residence in Winnetka, Wilmette, and Highland Park, and their various places of employment".

The claimants rendered an account of expenses each month to the Department of Conservation and such expenses were paid during their entire period of employment except for the month of January 1941, (and in one instance a few days in February). The only reason given for refusing to approve the vouchers for these field expenses incurred after January 1, 1941 was that it was "felt that claimant's headquarters should have been the point at which they were working". This, of course, was a departure from, and at variance with, the terms of the employment and claimants had been given no notice of any such change prior to the time they incurred this expense.

It is not controverted, but on the contrary admitted, of record, as stipulated, that it was a condition of claimant's employment that they were to be allowed their travelling and maintenance expenses when actually engaged in work away from their homes, and moreover were so paid during their entire period of employment except for the period from January 1 to February 8 when their employment was terminated.

The amount of reasonableness of such expenses or that they were not actually incurred in good faith as itemized in the signed vouchers duly presented by the claimants, has never been questioned. The services furnished by these claimants and the expenses which constitute the basis of their present claims were properly and duly authorized. The services were performed and the expenses incurred pursuant to such authorization and during the time the same were authorized. Vouchers were submitted with due diligence and claimants through no fault of their own were not paid, although, when the services were rendered and charges incurred, there remained a sufficient unexpended balance in the appropriation from which payment could have been made. Payment of these claims is to be distinguished from payment of additional compensation for personal services already performed and for which remuneration had already been paid. Claimants' regular salary vouchers for the month in question never included or purported to constitute payment of these expenses as itemized on their separate expense vouchers.

We find that claimants are entitled to an award. **An** award is therefore made in favor of: Alexander Steele, claimant, in the sum of \$61.98; Robert Moran, claimant, in the sum of \$88.14; Robert Eckart, claimant, in the sum of \$79.00; Ed Bleimehl, claimant in the sum of \$82.95.

(Nos. 3804, 3903, 3941 — Consolidated — Claimants awarded \$17,541.79.)

EDWARD J. BARRETT, Claimant *vs.* STATE OF ILLINOIS, Respondent.  
GREAT AMERICAN INDEYNITY COMPANY OF NEW YORK, a corp.  
Claimant, *vs.* STATE OF ILLINOIS, Respondent.

EDWARD J. BARRETT, Claimant, *vs.* STATE OF ILLINOIS, Respondent.  
*Opinion filed March 25, 1947.*

NASH, AHERN, McDERMOTT & McNALLY, of Chicago,  
for Claimant, EDWARD J. BARRETT.

MOSES, BACHRACH & KENNEDY, MR. FELIX VISK, of  
Counsel, for Claimant, GREAT AMERICAN INDEMNITY COM-  
PANY OF NEW YORK.

ARRINGTON, FIEDLER & HEALY, (MR. GEORGE FIEDLER  
& MR. THOMAS AMBERG, of Counsel) for Claimant, ED-  
WARD J. BARRETT.

GEORGE F. BARRETT, Attorney General, and WM. L.  
MORGAN, Assistant Attorney General, for respondent.

STATE TREASURER — *When an award may be made for legal expenses incurred under his official bond.* Where it appears that the Treasurer of the State of Illinois procured Indemnity Bonds as required by statute and subsequently while in the discharge of his official duties was sued on said bonds and was, thereafter, defended in said legal proceedings by the same bonding companies and they succeeded in having the claims against the State Treasurer, in his official capacity, discharged, and in so doing avoided a potential liability in excess of \$1,000,000.00 against the State of Illinois, an award may be made for the legal expenses necessarily incurred by the aforesaid bonding companies, in the defense of said litigation, on the grounds that the results of their efforts inured to the benefit of the State and the fees and charges were reasonable in view of the importance of the litigation.

ECKERT, C. J.

On June 1, 1943, the claimant, Edward J. Barrett, filed his original claim in this court. (Case No. 3804). Thereafter, and until November 15, 1944, he was absent from the State of Illinois, serving as a member of the United States Marine Corps. His claim was Subsequently

held to have been prematurely filed because of the pendency of litigation in the Superior Court of Cook County. (*Barrett vs. State of Illinois*, 13 C.C.R. 13). That litigation has since been terminated.

On February 1, 1945, the claim of the Great American Indemnity Company of New York was filed, (Case No. 3903), and on December 14, 1945, Edward J. Barrett filed a claim for the use and benefit of the Fidelity & Casualty Company of New York, a co-surety with the Great American Indemnity Company of New York, (Case No. 3941). The subject matter of the three claims being the same, on September 12, 1946, the cases were consolidated. Evidence in the consolidated cases was taken on September 18, 1946 before Commissioner East.

The Great American Indemnity Company now asks leave to withdraw its claim. Such leave is hereby granted, and the claim of the Great American Indemnity Company of New **York**, case No. 3903, is dismissed with prejudice.

The claims of Edward J. Barrett, claimant in cases No. 3804 and 3941, are based on the following facts: on November 4, 1930, Edward J. Barrett was elected Treasurer of the State of Illinois for a two year term beginning January 1, 1931. On December 9, 1930, he applied to the Fidelity & Casualty Company of New York to sign his official bond as a co-surety with the Great American Indemnity Company of New York, and on December 24, 1930, he executed a second application to the Fidelity & Casualty Company of New York to sign an additional bond, likewise with the Great American Indemnity Company of New York as co-surety.

Both bonds were signed, and each was in the penal sum of \$500,000.00. Each application contained an indemnifying agreement which provided that the applicant

would "indemnify the Company against any losses, damages, costs, charges and expenses it may sustain, incur, or become liable for in consequence of said bond or any renewal thereof, or any new bond issued in continuance thereof or as a substitute therefor." The Fidelity & Casualty Company of New York subsequently issued the two bonds requested, with the Great American Indemnity Company of New York as co-surety. Premiums in the amount of \$4,000.00 were paid by the State of Illinois; the bonds were filed in the office of the Secretary of State, and were duly approved by the Governor and two justices of the Supreme Court, all in accordance with statutory requirements. The bonds remained in full force and effect from the date of their filing until the expiration of Mr. Barrett's term of office on January 9, 1933.

On December 10, 1937, a suit was started in the Circuit Court of Sangamon County, Illinois, by American Legion Post No. 279, against the Fidelity & Casualty Company of New York, the Great American Indemnity Company of New York, and others, as defendants. On December 14, 1937 a suit was also started in the United States District Court, Southern Division, in and for the Southern District of Illinois, by Gordon L. Seeger, naming the Fidelity & Casualty Company of New York, and the Great American Indemnity Company of New York, and others, as defendants. In each suit it was alleged that Edward J. Barrett, and the Fidelity & Casualty Company of New York and the Great American Indemnity Company of New York were liable on the official bonds of Edward J. Barrett to the creditors of the Ayers National Bank of Jacksonville, Illinois, which had become insolvent in November, 1932, for the proceeds of certain securities of that bank. These securities were alleged to have been wrongfully deposited by the bank as a pledge to secure

moneys of the State of Illinois deposited with the bank prior to its insolvency, in an amount of approximately \$1,800,000.00. The complaints charged that Edward J. Barrett, as State Treasurer, had converted these funds when he liquidated the securities in his official capacity.

Subsequent to the service of summons upon the bonding companies, they notified Mr. Barrett of the pendency of the suits, and that they would expect reimbursement for any loss or expense incurred by reason of the litigation. Although Mr. Barrett was represented by the Attorney General of the State of Illinois, the bonding companies, by their own counsel, moved to strike the complaints and dismiss the suits. The motion to dismiss was granted by the Circuit Court of Sangamon County, Illinois, and upon appeal to the Supreme Court of Illinois the action of the trial court was affirmed. (*American Legion Post vs. Barrett*, 371 Ill. 78). The suit in the United States District Court was also subsequently dismissed.

The claimants now allege that the interests of the several defendants differed in the litigation; that it was necessary for the bonding companies to employ their own counsel for their defense; that because of these suits, the Fidelity & Casualty Company of New York sustained losses, damages, costs charges and expenses amounting to \$17,541.70; that Edward J. Barrett became liable to indemnify the Fidelity & Casualty Company of New York on account of such losses, costs, charges and expenses; that the Fidelity and Casualty Company of New York has demanded reimbursemept from Mr. Barrett, and that although morally and legally liable for the payment of this money, Mr. Barrett is financially unable to pay it; that because the liability was incurred by Mr. Barrett in his official capacity as Treasurer of the State of Illinois,

because the bonds were given to satisfy a statutory requirement, and because the premiums for the bonds were paid by the State, the liability is the liability of the State. Mr. Barrett further alleges, that, in incurring this liability, he was acting as an agent for the State; that such liability should be absorbed by the State; and he seeks an award for the use of the Fidelity & Casualty Company of New York in the amount of \$17,541.70 to discharge the liability which it has asserted against him.

The suit in the Circuit Court of Sangamon County, which was subsequently appealed to the Supreme Court of Illinois, was based upon the theory that the Deposit Act of Illinois was unconstitutional; that the Ayers National Bank of Jacksonville, Illinois, had no power to pledge assets with the State Treasurer of Illinois to secure the deposit of State funds; and that the State Treasurer, in selling the securities held as collateral to the deposit, and applying the proceeds in payment of the deposit, was guilty of conversion.

Admittedly, Mr. Barrett had proceeded in accordance with statutory requirements. But, had the Illinois court reached a contrary decision, Mr. Barrett and his sureties would have been subjected to a liability of \$1,000,000.00. On the other hand, through Mr. Barrett's prompt compliance with the statute, the State benefited to the extent of more than \$1,000,000.00, the other creditors of the insolvent bank having received only 25% of their claims. The expenses incurred by Mr. Barrett and his sureties, were thus incurred for the benefit of, and because of acts done for, the State of Illinois.

Mr. Barrett's claim is therefore *a* claim for charges incurred by him in the discharge of his official duties as State Treasurer of Illinois, in the discharge of official duties for the benefit of the State. It is clearly a claim

which the State, as a sovereign commonwealth, should discharge and pay. It is unthinkable that an elected state official, acting lawfully and in good faith, in pursuance of the statutes of the State, should be called upon to pay personally expenses of litigation brought against him in his official capacity, expenses which are clearly expenses of the State itself, and in no sense individual or personal.

The award prayed in this suit, in the amount of \$17,541.79, includes attorneys fees of \$17,500.00 and expenses of \$41.07 paid by the Fidelity & Casualty Company of New York, to Wilson & McIlvaine, of Chicago, and to Brown, Hay & Stephens, of Springfield. These attorneys handled the case in both the Circuit and Supreme Courts. Preparation in the trial court was necessarily complete and extensive. Briefs were filed, and oral argument was had before the trial judge. In the Supreme Court likewise, a large amount of time and effort was expended because the case involved important points, which had few if any direct precedents. The briefs filed on behalf of the claimants, on the appeal to the Supreme Court, form part of the record in this case. From these briefs, and from the opinion of the Supreme Court, it is obvious that the issues were many and complicated, and that the questions determined in the case were involved and serious. The decision of the Supreme Court was an important decision in that it approved the legislative policy of requiring the protection of deposits of the State from losses which otherwise might be incurred in the event of the failure of banks designated as State Depositories. The record clearly establishes that the time expended by counsel was necessary for the proper presentation and defense of the case. The hourly charge of \$15.00 was reasonable for a case involving the whole

history of the banking law of Illinois, and the constitutionality of the Illinois Deposit Act, and for legal counsel of high competence.

This court is of the opinion that the Fidelity & Casualty Company of New York, because of the size and importance of the litigation was fully justified in engaging separate counsel for defense of the suits in question; that the charges incurred in the employment of such counsel were both necessary and reasonable. The court is further of the opinion, that under the provisions of the indemnifying agreement the Fidelity & Casualty Company of New York is entitled to reimbursement for the costs and charges so incurred; that the obligation is properly that of the respondent and not of Mr. Barrett personally.

An award is therefore entered in the amount of \$17,541.70 in favor of Edward J. Barrett, for the use of the Fidelity & Casualty Company of New York.

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(No. 3861—Claim denied.)

RUTH C. MARSHALL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion Pled March 25, 1947.*

FRANK R. EAGLETON, for claimant.

GEORGE F. BARRETT, Attorney General for respondent, C. ARTHUR NEBEL, Assistant Attorney General, of counsel.

*CIVIL SERVICE—discharge of employee under—effective from time of order of, and service of notice of discharge of employee.* Where an employee, under Civil Service is discharged, and order of discharge is not set aside by said Commission, on complaint filed by employee and heard by it, such discharge is effective from date made and notice thereof served upon employee and not from the date of the final hearing on said complaint.

*CIVIL SERVICE—when lay-off justified.* Where lay-off of employee is stated to be necessary because of lack of funds—and there is no evi-

dence upon the part of the employee to disprove it—then employer is presumed to act under authority given in Chapter 24½ (Civil Service) Paragraph 14a—Illinois Revised Statutes.

CIVIL SERVICE—*when discharge of employee for political activities justified.* Where charges are made against employee for political activities, and notice is served upon her and hearing had—and after finding ~~of~~ the Commission no request for a rehearing is made ~~or~~ appeal taken, the discharge is justified.

### DAMRON, J.

On June 27, 1944, Ruth C. Marshall filed her complaint in this Court; alleging that on August 16, 1941 she was a duly certified employee of the respondent under the Civil Service Act. The complaint alleges that she was employed as a Junior Clerk in the Retailers' Occupation Tax Division of the Department of Finance, and on the last mentioned date received a "lay-off notice" effective August 18, 1941; that the reason for said lay-off was "retrenchment-inadequate appropriation".

It is further alleged in said complaint that on or about September 19, 1941, she was given suspension notice, the reason therefor being that she sought to affect the result of an election and took an active part in political campaigns contrary to the rules of the Illinois State Civil Service Commission. It is further alleged that on September 26, 1941, written charges were filed with the Illinois State Civil Service Commission by the Director of Finance and that she was given notice thereof by the mailing of a copy to her at her home address.

It is further alleged that a hearing was held before the Civil Service Commission on the 24th day of January 1942 as a result of which the removal of the claimant from her position was directed, a copy of which decision was mailed to her. She alleges in her complaint that

during all of this time she held herself available for work and tendered her services to the respondent.

The questions for this Court to Determine are (1) Did the respondent have the legal right to suspend her on August 18, 1941 due to lack of funds and (2) Were the charges before the Civil Service Commission legally presented and its decision properly rendered.

Chapter 24½ (Civil Service) Par. 14a, Ill. Rev. Stat. 1945 provides, "whenever it becomes necessary, through lack of funds or work, or other cause, to reduce the force in any employment in any department, the person who was last certified to said employment shall be first laid off. . . . Any employee whose position has been abolished through lack of work or funds, may, upon application, have his name placed on the reinstatement list from which he was appointed according to the examination and seniority of his classification. . . ."

Under this section of the Statute, the respondent had the authority to lay off this claimant due to lack of funds. Claimant contends in her brief, statement, and argument that sufficient funds did exist at the time the lay-off notice was served upon her but there is no proof in the record supporting this contention and the burden of proof was upon her to prove this fact.

The remaining question to be decided by this Court is whether or not she was lawfully discharged in accordance with the provisions of the Civil Service Act by the Civil Service Commission on written charges for taking an active part in political campaigns.

The record discloses that charges were preferred against this claimant for political activity and that notice of said charges was directly served upon claimant, that a hearing was had, testimony offered in support of the charges; that claimant was represented by counsel at

said hearing but offered no evidence on her behalf. The charges were sustained according to the report of the President of the Illinois Civil Service Commission which is a part of this record; thereafter, claimant failed to request a rehearing of the Civil Service commission and did not appeal from the findings of said Commission in the manner provided by the Statute.

Claimant cites the case of *Hatcher vs. State*, 12 C.C.R. 304 and *Rogers vs. State*, 14 C.C.R. 152 in support of her position that she is entitled to recover her wages from the time of her lay-off to the time of her suspension notice. The *Hatcher* case, *supra*, is a claim under the Workmen's Compensatibn Act and has no bearing on this claim. In the *Rogers* case, claimant was illegally discharged by her employer without the prior consent of the Civil Service Commission and was later re-employed. The record discloses that she was wrongfully prevented from performing her duties to which she was assigned. This case is not in point. Here we find this employee, Ruth C. Marshall, was first laid-off for a period of one month due to lack of sufficient funds to pay her. This action was proper under the Statute. During this lay-off period, charges were filed against her for political activity. These charges were sustained by the Civil Service Commission. Claimant was duly represented by counsel at the trial, no appeal was filed and the findings of the Commission are now in full force and effect.

In *Huwald vs. State*, 12 C.C.R. 305, we held where an employee under Civil Service is discharged, and the order of discharge is not set aside by the Commission on complaint filed by the employee and heard by it, such discharge is effective from the date made and not from the date of the final hearing on the complaint. The burden of proof rests upon this claimant to prove her right to

an award by clear preponderance of the evidence and having failed to do so, this claim for wages in the sum of \$800.00 from September 18, 1941 to February 7, 1942 inclusive, must be denied for the reason that claimant was lawfully discharged under the provisions of the Civil Service Act.

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(No. 3914—Claimant awarded \$3,146.64.)

EFFIE SPERRY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed March 25, 1947.*

ROY H. GLOCKHOFF, for claimant.

GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*employee of East Moline State Hospital within provisions of—when an award for total temporary disability and permanent total loss of use of leg—may be made under.* Where an employee of East Moline State Hospital sustains accidental injuries, arising out of and in the course of her employment, resulting in temporary total disability and permanent total loss of use of her left leg, an award for compensation therefor may be made, in accordance with the provisions of the Act, upon compliance by the employee with the terms thereof.

BERGSTROM, J.

Claimant, Effie Sperry, was employed at the East Moline State Hospital, East Moline, **Rock** Island County, Illinois. On November 11, 1944 while so employed and in the discharge of her duties, a patient attacked claimant and dragged her around the room, and in the course of said altercation claimant suffered a fracture of her left hip. That immediately after the said injury Dr. Walton Tackett, a physician in the State Hospital was notified of said injury, and the claimant was hospitalized at the East Moline State Hospital. That Dr.

Louis Daniel Barding, a licensed physician in the City of East Moline was also called and assisted in reducing said fracture, and thereafter, from time to time administered treatment to the claimant. That while claimant was convalescing, she fell from the bed in said institution and suffered another fracture of said left hip in substantially the same place. Claimant remained under the care of Drs. Tackett and Barding until July 23, 1945, when she was discharged from the hospital. She was taken to the home of her daughter-in-law, where she remained in a wheel chair until Christmas of 1945, when she started walking by pushing a chair around in front of her, and as the leg became stronger she later could walk with the aid of a cane.

At the time of the injury, employer and employee were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course of claimant's employment.

At the time of the injury claimant was 64 years of age and had no children under the age of 16 years dependent upon her for support.

The evidence shows that claimant, at the time of her injury, was receiving \$120.00 per month, or \$1,440.00 per year. Claimant's compensation rate is, therefore, \$16.27 per week. The record shows that claimant incurred temporary total disability until July 23, 1945 and is entitled to compensation from November 12, 1944 to July 23, 1945, a period of 36-1/7 weeks at a compensation rate of \$16.27 per week, or the sum of \$588.04. From this amount should be deducted the sum of \$532.70 which claimant received for non-productive time, leaving a balance due her of \$55.34 for temporary total disability.

Respondent paid for the medical and hospital services rendered the claimant, excepting the charges of Dr. Louis Daniel Barding amounting to \$279.00, 'which has not been paid.

Claim is made for complete and permanent disability. Claimant, testifying in her own behalf, stated that she can walk around the house provided she holds on to something or uses a cane, but can't get along without support. This is also substantiated by the testimony of her daughter-in-law, and Dr. Barding testified that claimant had a shortening of the leg and that the hip joint was quite stiff; that, in his opinion, this condition would be permanent, and that she would require a cane or some kind of support permanently. He last examined her about the time she was discharged from the hospital, at which time he came to his conclusion with respect to the permanent character of her injuries.

From the evidence, the Court is of the opinion that claimant is entitled to an award for the total loss of the use of her left leg. Under the provisions of the Workmen's Compensation Act she is, therefore, entitled to an award computed on the basis of \$16.27 per week for 190 weeks, or \$3,091.30, plus \$55.34 balance due for temporary total disability, a total of \$3,146.64, plus the sum of \$279.00 payable to Dr. Louis Daniel Barding, East Moline, Illinois for medical services, plus the sum of \$53.24 payable to Arne N. Bufe, 2508 23rd Ave. Ct., Moline, Illinois for reporting the testimony at the hearing before Commissioner Jenkins.

An award is therefore entered in favor of claimant, Effie Sperry, in the sum of \$3,146.64, payable as follows :

\$1,470.83, which has accrued and is payable forthwith;  
 \$1,675.81, payable in weekly installments of \$16.27 beginning March  
 31, 1947 for a period of 103 weeks.

An award is also entered in favor of Dr. Louis Daniel Barding for medical services in the sum of \$279.00, which is payable forthwith.

An award is also entered in favor of Arne N. Bufe for stenographic services in the amount of \$53.24, which is payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "an Act concerning the payment of compensation awards to State employees."

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(No. 3923—Claimant awarded \$500.00.)

LEOPOLD COHEN IRON CO. A CORPORATION, Claimant, vs. STATE OF ILLINOIS, Respondent,

*Opinion filed March 25, 1947.*

GEORGE B. COHEN, for claimant.

GEORGE F. BARRETT, Attorney General and WM. L. MORGAN, Assistant Attorney General, for respondent.

ILLINOIS INDUSTRIAL COMMISSION—WORKMEN'S COMPENSATION ACT—*agreement whereby claimant deposited with Illinois Industrial Commission certain sums of money as provided for in Workmen's Compensation Act—in order to qualify as a self-insurer under said Act—money so deposited converted by Chief Security Examiner of said Commission to his own use—claimant subsequently insured with responsible company—when award for refund of deposit may be made.* Where it appears that claimant, in order to be able to do business in the State, entered into an agreement with the Illinois Industrial Commission whereby they deposited with it certain sums of money, in order to qualify as self-insurers, as provided in the Workmen's Compensation Act, and said claimant subsequently insured with a responsible company, an award for the refund of the money deposited with the Industrial Commission is proper and justified, even though the said deposit had been converted by the Chief Security Examiner to his own use. The same question was presented to this Court and decided in the case of *J. Roy Browning vs. State*, ante, this volume, and what was said there is applicable to this case.

ECKERT, C. J.

The claimant, Leopold Cohen Iron Company, is en-

gaged in the scrap iron business, and operates under the Workmen's Compensation Act of this State. On January 28, 1935, the claimant made an agreement with the Illinois Industrial Commission, by the terms of which claimant deposited with the Illinois Industrial Commission One Hundred Dollars (\$100.00) in cash, and agreed to deposit the further sum of Fifty Dollars (\$50.00) per month. The agreement was executed pursuant to the provisions of the Workmen's Compensation Act' to qualify claimant as a self insurer. The moneys so deposited were to be held by the Illinois Industrial Commission as a guarantee for the payment of any sums found by process of law to be due to the employees of the claimant under the Workmen's Compensation Act. The agreement further provided that the moneys would be surrendered to claimant upon presentation to the Illinois Industrial Commission of a certificate or a statement signed by the Illinois Industrial Commission and the claimant that no payments were due or unpaid from the claimant to its employees or others under the Workmen's Compensation Act.

A total of Five Hundred Dollars (\$500.00) was deposited by the claimant with the Commission; the receipt of the moneys was duly acknowledged by the Commission; and all the moneys were paid to L. J. O'Connell, then Chief Security Examiner for the Commission.

On April 7, 1942, claimant was advised by the Illinois Industrial Commission that said L. J. O'Connell had converted the money of the claimant, as well as that of other self-insurers, to his own use. Claimant, having at that time insured itself in a responsible carrier of insurance against compensation claims, and having made the necessary proof of such insurance to the Commission, demanded the return of the Five Hundred Dollars

(\$500.00). The money not having been returned to claimant, claim was filed herein on July 23, 1945, seeking an award for the amount of the deposit.

On October 15, 1946, testimony was taken before Commissioner John L. East, Jr. The facts were not controverted, and were amply supported by documentary evidence introduced by the claimant.

The deposit of money by claimant with the Industrial Commission was, an involuntary transaction, required by the law of Illinois before claimant could do business in this state. (Illinois Revised Statutes 1941, Chap. 48, par. 172.26) The Industrial Commission was authorized by law to enter into the contract with the claimant (*Pinkerton's Nat. Detective Agency vs. Fidelity & Deposit Co.*, 138 Fed. 2d. 469. In the case of *J. Roy Browning vs. State of Illinois*, No. 3788, ante, a claim based on facts very similar, claimant was granted an award. That case is controlling here.

An award is therefore entered in favor of the claimant in the sum of Five Hundred Dollars (\$500.00).

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(No. 3924—Claimant awarded \$4,291.19.)

KATIE WRIGHT, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed March 25, 1947.*

JOHN F. GIBBONS, for, claimant.

GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

**WORKMEN'S COMPENSATION ACT**—*employee at Alton, State Hospital within provision of—when an award may be made for total permanent disability under.* Where an employee at Alton State Hospital sustains accidental injuries, arising out of and in the course of her employment, resulting in total permanent disability, an award for compensation

therefor may be made, in accordance with the provisions of the Act, upon compliance by employee with the terms thereof.

*SAME*—when an award for special medical and nursing services will be denied. Where a claimant elects to secure medical, hospital or nursing services, at her own expense, no award therefor can be made.

ECKERT, C. J.

On May 20th, 1944 the claimant, Katie Wright, employed by the respondent as an Institution Worker at the Alton State Hospital, Alton, Illinois, while carrying a pan of water from the dining room of the hospital to an adjoining kitchen, slipped and fell, sustaining a fracture of the descending ramus of the left pubis. She was hospitalized at the institution, but the following day went to St. Joseph's Hospital, Alton, Illinois for treatment. On May 26th she was removed from the hospital to the home of her daughter, Mrs. B. J. Schaefer, where she was confined to her bed until November 9, 1944.

At that time, claimant's condition not having improved, she returned to St. Joseph's Hospital for &a-thermic and other treatment, and remained in the hospital until December 9, 1944 when she went back to her daughter's home. She remained in bed there until the spring of 1945.

At the time of the accident, the employer and employee were operating under the provisions of the Workmen's Compensation Act of this state, and notice of the accident and claim for compensation were made within the time provided by the act. The accident arose out of and in the course of claimant's employment.

During the year immediately preceding the injury claimant's earnings were \$1,320.00. Her compensation rate, therefore, would be 50% of \$25.38, or \$12.60. The injury having occurred subsequent to July 1, 1943, this must be increased 17½%, making a compensation rate

of \$14.91. Claimant was paid by the respondent for non-productive time the sum of \$408.81.

Claimant seeks an award for the following bills which she has paid:

C. N. Streeper, Alton, Illinois ambulance service. ....	\$ 5.00
St. Joseph's Hospital, Alton, Illinois. ....	15.00
Prescription Shop, Alton, Illinois, medicines. ....	49.30
	<hr/>
	\$74.30

For the following bills which have not been paid:

Dr. Paul O'Neill, Alton, Illinois .....	\$ 75.00
Dr. Kenneth E. Little, Alton, Illinois.. ....	60.50
Dr. C. E. Merkle, Alton, Illinois. ....	42.00
Dr. H. P. McCuistion, Alton, Illinois. ....	35.00
Dr. Lewis Waechter, Alton, Illinois .....	358.00
St. Joseph's Hospital, Alton, Illinois.. ....	413.50
Mrs. B. J. Schaefer, Alton, Illinois nursing, etc.. ....	2,164.00
	<hr/>
	\$3,138.00

For total disability from May 20, 1944, 315 weeks at \$14.91 per week, and one week at \$3.35, and thereafter an annual pension for life.

Claimant testifying on her own behalf stated that, during her convalescence, when she was not hospitalized, she stayed in her daughter's home, during which time her daughter took care of her; that from the time of the accident, until June, 1945, she was unable to walk alone. She testified, at the time of the hearing that she was then able to walk by herself, but that she was not able to do any work; that she could not use her hand at all; that both her legs continued to trouble her; that at times, she can not sit very long; that she lies down several times a day. On cross-examination she stated that previous to her employment by the respondent she lived with her daughter; that when she left the Alton State Hospital, the day after the accident, she did so because, "I wanted

to come closer to home. I wanted to go to my daughter's home. I did not go to my daughter's house, but went to the hospital at St. Joseph's. -- When asked whether or not the officers of the Alton State Hospital recommended that she leave the hospital, she answered, "No, I just, told Dr. Strossman I was going to St. Joseph's." She stated that one of the reasons she left the institution was because "it was too hard for my daughter to get out to see me." She also testified to the employment of several doctors, all of whom were of her own choice.

Mrs. B. J. Schaefer, testifying on behalf of claimant, stated that she was Mrs. Wright's daughter; that she had presented her mother with a bill amounting to \$2,164.00 for services rendered from May 26, 1944 to April 1, 1945; that the bill included board and room for forty weeks at \$10.00 per week, and included nursing services of \$5.00 per day for 98 days, from May 26, 1944 to August 31, 1944; of \$7.00 per day for 69 days, from September 1, 1944 to November 9, 1944, and of \$7.00 per day for 113 days, from December 9, 1944 to April 1, 1945. Mrs. Schaefer testified that during the 40 weeks, for which she charged \$10.00 per week for board and room, it was necessary to give her mother a special diet; that she was not a registered nurse, but considered herself a practical nurse. On cross-examination she stated that she had not done practical nursing outside of her own home; that she is married and living with her husband and two children.

Dr. H. P. McCuisition, a witness for claimant, testified that he first saw claimant on May 21, 1944, at St. Joseph's Hospital; that from his examination at that time he found she had a fracture of the descending ramus and the left pelvis. He stated that the fracture was set, and rest in bed was prescribed. He had not seen claimant since the 26th of May, 1944.

Dr. C. E. Merkle, a witness for claimant, testified that he first saw claimant on November 10, **1944**; that his examination at that time disclosed that claimant had two knees in a semi-flexed position from having been in bed for some months; that it was difficult and painful for claimant to extend or flex the knees to a normal position; that there was no increase in, or swelling of the knees, and that an X-ray did not show a Rheumatoid arthritic 'condition. Claimant did have' some swelling of the right wrist and hand, but the doctor attributed it to a disuse of the joints. He had not seen claimant since November **20, 1944**.

Dr. P. J. O'Neill, testifying for claimant, stated that he first saw claimant at St. Joseph's Hospital on November 20, **1944**, and treated her for a period of three or four weeks; that during the time claimant was immobilized in bed, following her injury, to permit healing of the fractured pelvis, she developed a disuse-atrophy of the muscles of the legs, and a Rheumatoid condition of the right wrist and hand. The doctor stated that the immobilization made necessary by the injury probably had aggravated an arthritic condition, which had become permanent.

At the conclusion of the testimony before Commissioner Jenkins, the attorney for claimant stated that Dr. Lewis Waechter had advised claimant he wished to withdraw his statement for services to claimant, and that he desired to make no charge for such services. He refused to testify voluntarily, and neither claimant nor her counsel desired to subpoena him.

From the record, and from the personal observation of the claimant by the commissioner, the court finds, that as a result of her injury, claimant is totally disabled. She is, therefore, entitled to an award in the amount of

\$4,000.00. The injury having occurred after July 1, 1943, this must be increased  $17\frac{1}{2}\%$ , making a total of \$4,700.00, and thereafter an annual pension for life of 8% of \$4,700.00, or \$376. The sum of \$408.81, paid to claimant by respondent for non-productive time, must, however, be first deducted.

No award can be made on account of medical, hospital, or nursing services since it is clear from the record that the employee elected to secure such services at her own expense.

Peggy Hamby has rendered a statement in the sum of \$35.80 for the taking and transcribing of the evidence. This charge is fair and reasonable.

An award is therefore entered in favor of Peggy Hamby for taking and transcribing the testimony in this case in the amount of \$35.80, and an award is entered in favor of claimant, Katie Wright, in the amount of \$4,291.19, as follows:

**\$2,206.68**, accrued, is payable forthwith;

**\$2,084.51**, is payable in weekly installments of **\$14.91** for a period of **139** weeks, beginning March **31, 1947**, with a final payment of **\$12.02**; thereafter an annual pension of **\$376.00** payable in monthly installments of **\$31.33** during the term of her natural life.

This court hereby retains jurisdiction of this cause for the making of such other and further orders herein that may be necessary in accordance with the provisions of the Workmen's Compensation Act.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3938—Claimant awarded \$1,384.37.)

WILLIAM C. LANGE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed March 25, 1947.*

LEONARD W. STEARNS, for claimant.

GEORGE F. BARRETT, Attorney General, WM. L. MORGAN, Assistant Attorney General, for respondent.

*WORKMEN'S COMPENSATION ACT—where an award for compensation for total temporary disability and permanent partial loss of use of leg may be made under.* Where an employee of the State sustains accidental injuries, arising out of and in the course of his employment, resulting in temporary total disability and permanent partial loss of use of left leg—an award for compensation therefor may be made in accordance with the provisions of the Act, upon compliance by the employee with the terms thereof.

ECKERT, C. J.

On November 24, 1944, claimant, William C. Lange, while employed by the respondent as one of a group of four men assigned to pavement crack-filling operations on S.B.I. Route 4A in the vicinity of Austin Boulevard in the City of Chicago, lost his footing and fell from the running board of a truck. The right rear wheel of the truck passed over claimant's left leg, fracturing and exposing the bones just above the ankle.

Claimant was immediately taken by ambulance to the Holy Cross Hospital, where it was found that no beds were available. The hospital rendered first aid, and called Mr. Lange's wife, who in turn called their family physician, Dr. E. Odean Bourque. In accordance with Dr. Bourque's instruction, claimant was then transferred to the Mother Cabrini Memorial Hospital.

Claimant remained under the care of Dr. Bourque, who was assisted in his treatment by Dr. S. Mirabella and Dr. E. J. Berkheiser, until October 4, 1945, when Dr. Bourque advised claimant to return to work. While in

the Mother Cabrini Memorial Hospital, claimant occupied a private room, and had private nursing services, furnished at the request of the respondent.

At the time of the injury the employer and employee were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course of claimant's employment.

At the time of the injury, claimant had no children under sixteen years of age dependent upon him for support. He was first employed by the respondent at a wage rate of sixty-five cents an hour on October 3, 1944; he worked eight hours per day,  $5\frac{1}{2}$  days per week. Employees engaged in the same capacity as Mr. Lange worked regularly throughout the year and earned an average weekly wage of \$29.34. Claimant's compensation rate is therefore \$17.24 per week. No claim is made for temporary total disability, the respondent having paid claimant at the rate of \$17.24 a week, for the period of November 23, 1944, to October 3, 1945, inclusive, being a total amount of \$770.87.

Respondent also paid on behalf of claimant the following medical and hospital services :

Dr. N. Odean Bourque, Chicago.....	\$1,091.00
Dr. H. B. Thomas, Chicago.. .....	15.00
Mother Cabrini Memorial Hospital, Chicago.. .....	389.05
William C. Lange (expenses), Chicago.. .....	139.37
	<hr/>
	\$1,634.42

Claim is made, however, for special nursing services in the amount of \$73.50, and for hospital services in the amount of \$189.00 paid by claimant, and for which he should be reimbursed.

Claim is also made for permanent partial loss of use

of claimant's left leg. Claimant, testifying in his own behalf, stated that the leg will not bear the same weight it was able to bear prior to the injury; that since the injury, he is not able to be on his feet for more than an hour at a time; that his left foot is so swollen that his left shoe is two sizes larger than the shoe worn on his right foot.

From this testimony, and from the report of the Division of Highways, which forms a part of the record in the case, it appears that claimant has suffered a one-third loss of use of his left leg. Under the provisions of the Workmen's Compensation Act of this State, he is, therefore, entitled to an award computed on the basis of **\$17.24** per week for **63-1/3** weeks, or **\$1,091.87**; plus the sum of **\$42.30** payable to A. M. Rothbart and Associates for reporting the testimony at the hearings before Commissioner East; and plus the sum of \$262.50 reimbursement for hospital and nursing services.

An award is therefore entered in favor of A. M. Rothbart and Associates in the amount of \$41.30, which is payable forthwith, and an award is entered in favor of the claimant in the amount of **\$1,354.37** which has accrued and is payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

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(No. 3946 — Claimant awarded \$4,332.83.)

**BERTHA PARKS GRISHAM**, Claimant, *vs.* **STATE OF ILLINOIS**,  
Respondent.

*Opinion filed March 25, 1947.*

**R. W. HARRIS** and **D. L. DUTY**, for claimant.

**GEORGE F. BARRETT**, Attorney General; **C. ARTHUR NEBEL**, Assistant Attorney General, for respondent.

**WORKMEN'S COMPENSATION ACT**—*attendant at Anna State Hospital within provisions of— when an award made be made for total permanent disability. Where an attendant at Anna State Hospital sustains accidental injuries, arising out of and in the course of her employment, resulting in total and permanent disability, an award for compensation therefor may be made, in accordance with the provisions of the Act, upon compliance by the employee with the terms thereof.*

ECKERT, C. J.

On April 11, 1945, claimant, Bertha Parks Grisham, employed by the respondent as an attendant at the Anna State Hospital, 'Anna, Illinois, while scrubbing the floor of the office of Ward E-2, slipped and fell, sustaining a transverse fracture through the body of the first segment of the coccyx. She landed in a sitting position and then fell backwards, striking the back of her head.

She was first attended by Dr. Doggett, a member of the hospital staff. X-rays were taken, and claimant was hospitalized for a period of one week. The X-rays showed the fracture of the coccyx, but showed no evidence of fracture or dislocation in the cervical region.

Upon her release from the hospital, claimant went to her home, but on May 26, 1945, returned to the institution, 'complaining of severe pain in the back of her neck. X-rays were again taken, including the atlas and axis; again, no evidence of fracture or dislocation appeared.

At the time of the injury, the employer and employee were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course of claimant's employment.

During the year immediately preceding the injury, claimant's earnings totalled \$1,440.00. Her average weekly wage was \$27.69, and her compensation rate is \$13.85. The injury having occurred subsequent to July 1,

1943, this must be increased  $17\frac{1}{2}\%$ , making a compensation rate of \$16.27 per week. The respondent furnished all medical, surgical, and hospital services, except services in the amount of \$150.00 which claimant paid personally. Respondent also paid claimant, for non-productive time, from the date of the injury to October 11, 1945, the sum of \$517.17. Claimant is fifty-five years of age and has no children under the age of sixteen years. She seeks an award for total permanent disability.

From the report of the Department of Public Welfare, which forms a part of the record, it appears that claimant was treated, during the summer of 1944, by Dr. Henry A. Utter for rheumatic fever, and that X-rays taken at that time showed (claimant to have a chronic productive osteoarthritis, as evidenced by a lipping and roughening of the vertebral body in the cervical and lumbar region. X-rays taken approximately a year later, and following the injury, showed a marked increase in the osteoarthritis deposits, in the lipping on the anterior surface of the bodies of all cervical vertebrae, and a beginning bridging between the vertebrae. As of July 28, 1945, it appeared that claimant had a far advanced productive progressive osteoarthritis involving the bodies of all the cervical vertebrae which had progressed rapidly during the preceding year. This report also indicated that X-rays of the coccyx, taken on July 28, 1945, showed a strong union at the point of fracture, with good alignment, and no deformity.

The claimant, testifying on her own behalf, stated that she has not been able to work since the accident, that she suffers constant pain in the region of the coccyx, that when she sits down, she changes from side to side in an unsuccessful attempt to obtain relief, that she is unable to be on her feet very long at a time, and that she

is able to do only a little house work, such as cooking, making her bed, and keeping the house in order. She employs others to do her washing and cleaning. She testified that her "head has never been right" since the fall, that her neck hurts, and is stiff, and difficult to turn in either direction. She stated :

"I haven't improved, I think, in fact that I am just gradually growing worse. I don't feel that I am as well as I was after I recovered to a certain extent when I first got injured."

Upon cross-examination, claimant stated that she has not tried to take any employment since the injury; that she is able to talk and to use both of her arms; that prior to her work at the Anna State Hospital, she kept house for herself and her husband; that her husband is still working at the institution; and that she keeps house, excepting that she is not able to do the washing and heavy cleaning. She also admitted that on December 12, 1945, she had a cerebral hemorrhage, and since that time has not had full use of the entire right side of her body.

Dr. Henry A. Utter, called as a witness for claimant, testified that he first saw claimant in December, 1945, at the time she suffered the cerebral hemorrhage. The doctor's examination at that time revealed an arteriosclerotic condition, and a possible arthritic condition. Dr. Utter indicated that such a condition would be accelerated or aggravated by a fall. He considered claimant's condition to be permanent.

On cross-examination, Dr. Utter stated that arteriosclerosis could not be caused by a fall. He stated that he was unable to determine the cause of the arthritic condition, or how long it had existed. On re-direct examination, the doctor indicated that claimant's present condition could be caused by a fall, if the fall were severe enough.

Dr. William A. Baker, testifying on behalf of claimant, stated that he first saw claimant on June 4, **1945**, at which time he examined claimant and took X-rays. The X-rays showed a chronic osteoarthritis, and his examination disclosed a moderate degree of arteriosclerosis. Dr. Baker stated that the fracture of the coccyx would not cause a permanent disability, but stated that the arthritic condition or the arteriosclerotic condition would likely be aggravated by claimant's fall.

Dr. Baker also testified that he last examined claimant on July 29, **1945**, and at that time found the condition of the cervical region worse than it had been previously, but that the region of the coccyx had much improved. Dr. Baker stated that he believed the arthritic condition in the cervical region was aggravated by the injury, but he expressed the opinion that the cerebral hemorrhage had no connection with the fall. On cross-examination Dr. Baker stated that the arthritis had nothing to do with the fall whatsoever.

Although the medical testimony is contradictory, it appears that the claimant, prior to the fall, was suffering from arteriosclerosis and a chronic osteoarthritis; that subsequent to the injury, she suffered a cerebral hemorrhage which was not caused by the injury; and that the fall aggravated the pre-existing arthritic condition. The record, on the whole, sustains claimant's contention that as a result of the injury she is totally and permanently disabled within the meaning of the Workmen's Compensation Act of this State.

Claimant is, therefore, entitled to an award in the sum of \$4,700.00 less the sum of \$517.17, paid claimant for non-productive time, or the sum of \$4,182.83, and thereafter a pension for life equal to 8% of **\$4,700.00**, or \$376.00 per year, payable in equal monthly installments.

Claimant is also entitled to be reimbursed in the sum of \$150.00 on account of moneys expended by her for medical services.

The testimony on hearing before Commissioner Jenkins was transcribed by Ruth A. Coffman who has submitted a statement of **\$27.40** for her services. This charge is reasonable and proper.

An award is therefore entered in favor of claimant, Bertha Parks Grisham, in the amount of **\$4,332.83** payable as follows:

- \$ 150.00 Reimbursement for medical services, is payable forthwith;
- \$1,627.00 Which has accrued, is payable forthwith;
- \$2,555.83 To be paid in weekly installments of \$16.27 per week beginning March 20, 1947 for a period of 157 weeks, with a final payment of \$1.44;
- Thereafter a pension for life in the sum of \$376.00 annually, payable in monthly installments of **\$31.33**.

An award is also made in favor of Ruth A. Coffman for stenographic services in the amount of **\$27.40** which is payable forthwith.

This award is subject to 'the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."'

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(No. 3952—Claim denied.)

**HERMAN O. RATHJE**, Claimant, *vs.* **STATE OF ILLINOIS**,  
Respondent.

*Opinion filed March 25, 1947,*

**CHARLES G. SEIDEL**, attorney for claimant.

**GEORGE F. BARRETT**, Attorney General, and **WILLIAM L. MORGAN**, Assistant Attorney General, for respondent.

*WORKMEN'S COMPENSATION ACT—court without jurisdiction to hear claim under—where no claim made or application filed for compensation within time fixed in Section 24. Where no claim is made for com-*

pensation, nor any application filed for same, within time fixed in Section 24 of the Workmen's Compensation Act, the court is without jurisdiction to proceed with a hearing on application filed thereafter.

**BERGSTROM, J.**

Claimant, Herman O. Rathje, was employed by the, State of Illinois at the Elgin State Hospital, Elgin, Illinois, and while so employed on April 22, 1944 in the discharge of his duties, a patient by the name of Richard James kicked him in the abdomen, immediately after which he suffered severe pain and called for help. He made a report of his injury the following day, April 23, 1944, to the Chief Nurse of said institution, and shortly thereafter was examined by Dr. Beim, a physician employed by the State of Illinois. The doctor informed him that he had a bad hernia on the left side and indications of another one on the right side. Subsequently, in July of that year, he talked to Dr. Charles Reed, the Managing Officer of the Elgin State Hospital, and asked Dr. Reed whether he could have his' own doctor and hospital care for an operation, as his hernia was bothering him. Claimant testified that Dr. Reed said he would have to take the matter up with the State Commission, and later informed claimant that he had received a letter from the Commission stating that any employee had a right to select his own doctor and his own hospital. Claimant went to the hospital and had a hernia operation on August 30, 1944, and stayed in the hospitpl until September 10, 1944. He also testified that Dr. Reed advised him to send in the doctor and hospital bills in triplicate, and when so presented later, payment of them was refused; that the claimant then paid the bills.

Claimant reported back to work on October 19, 1944, worked one day and was then given a sixty-day leave of absence. After his leave of absence he reported back to

work on December **19, 1944** and worked continuously thereafter until June **16, 1945** when he claims he was sick for a week or ten days, but there is no evidence in the record with respect to the nature of this last illness. He commenced work in other employment about July **4, 1945**.

. Claimant was paid by the State of Illinois his regular salary of \$75.00 per month, plus **\$32.00** maintenance per month during the time of his illness and leave of absence, which he now claims was due him for accumulated sick leave and vacation, and that the amount so paid should not be applied in payment of the amount he alleges is due him for temporary total disability. He also requests payment of his medical bills.

Claimant's accident occurred on April **22, 1944**, and he returned to work the last time on December **19, 1944**.

This Court has repeatedly held that under Section **24** of the Workmen's Compensation Act, the right to file application for compensation shall be barred unless such application is filed within one year after the date of the accident where no compensation has been paid, or within one year after the date of last payment of compensation where any has been paid. The Court of Claims is without jurisdiction to enter an award unless claim is filed within the time fixed by said Section **24**.

The complaint, on its face, and the evidence, shows that the accident occurred on April **22, 1944** and that no compensation was paid other than the regular salary of claimant during his period of disability and sick leave. From the record, this terminated on December **1944**, the date claimant went back to work. The record also shows that the complaint, on its face, was not filed until March **4, 1946**. Accordingly, this Court is without jurisdiction to hear this complaint.

The testimony on the hearing before Commissioner

East was transcribed by A. M. Rothbart Court Reporting Service, 120 South LaSalle Street, Chicago, Illinois, and invoice rendered for \$25.95. This charge is reasonable and should be paid.

Claim of claimant, Herman O. Rathje, is denied.

An award is entered in favor of A. M. Rothbart Court Reporting Service for stenographic services in the amount of **\$25.95**, which is payable forthwith.

(No. 3967—Claimant awarded **\$622.83**.)

JOHN THOMAS WAGGONER, 'AN INFANT, BY OPAL WAGGONER, HIS MOTHER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed March 25, 1947,*

' MAURICE E. GOSNELL, for claimant.

GEORGE F. BARRETT, Attorney' General, and C. ARTHUR. NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when award may be made for temporary total disability and permanent partial loss of use of right hand.* Where an employee sustains accidental injuries, arising out of and in the course of his employment, resulting in temporary total disability and a 25% total loss of use of his right hand, an award for compensation therefor may be made, in accordance with the provisions of the Act, upon compliance by the employee with the requirements thereof.

BERGSTROM, J. -

On July 11, 1945 claimant, John Thomas Waggoner, was one of a group of men painting a bridge on S.B.I. Route 1 over the Embarrass River near the northern limits of the City of Lawrenceville, Lawrence county, Illinois. He was using a saddle seat, or painter's swing, to support himself while painting the higher parts of the steel truss bridge. About 10:00 A. M. while shifting the position of his support, the hook which held his seat to a brace slipped off and allowed claimant to fall to the

bridge deck, lacerating and bruising his face and body, dislocating his right ring finger, and fracturing his right middle finger and wrist.

The foreman of the group took claimant to Dr. W. I. Green, Lawrenceville, who rendered first aid and ordered claimant hospitalized at the Good Samaritan Hospital, Vincennes, Indiana. There he was placed under the care of Dr. William Schulze of Vincennes. Dr. Schulze reduced the fracture, released the patient from the hospital, and returned him to the charge of Dr. Green on July **14, 1945**.

From the report of the Division of Highways, which forms part of this record, on September 19, 1945 Dr. Green sent his final report and stated therein "Nature of Injury — Fracture right radius just above wrist. Fracture right finger just above second articulation. Dislocation right ring finger. Lacerated wounds of nose and face. Minor wounds left hand and fingers."

At the time of the injury, the employer and employee were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course of claimant's employment.

Dr. Green discharged claimant from further medical treatment on September **15, 1945** and certified him able to work on October **1, 1945**. Claimant was paid compensation amounting to **\$124.97** for temporary total disability at the rate of \$10.80 per week for the period from July **12, 1945** to September **30, 1945** inclusive, **11-4/7** weeks. At the time the cause of action arose claimant's wages were **75c** an hour. Eight hours constituted a normal working day, and employees in the same classification as claimant worked less than **200** days a year. Claimant earned during his period of employment with the Division

of 'Highways the total sum of \$222.95. For compensation purposes, claimant's earnings should be computed on the basis of \$1,200.00 per year, or \$23.07 per week, and he is entitled to compensation on the basis of \$13.83 per week instead of \$10.80. He is, therefore, entitled to receive the additional sum of \$35.06 as compensation for temporary total disability.

The medical charges incurred in the treatment of claimant's injuries were paid by respondent, as follows :

Dr. Wm. Schulze, Vincennes, Indiana.. .. .	\$35.00
Dr. W. I. Green, Lawrenceville, Illinois.. .. .	34.00
Dr. Tom Kirkwood (x-ray) Lawrenceville. ....	5.00
Good Samaritan Hospital, Vincennes, Ind.. .. .	25.00

From the medical testimony, it appears that claimant has practically no flexion of his right ring finger at the first or proximal inter-phalangeal joint, that it is practically useless and interferes with his work when he grasps anything; when the other fingers go down the injured finger stays up. There is also some curtailment in the flexion of his right hand wrist, which together with the finger injury will permanently restrict claimant's use of his right hand. After consideration of all of the evidence, claimant is entitled to an award based on 25% of total loss of use of his right hand, or the sum of \$587.77, which is computed on the basis of \$13.83 per week for a period of 42½ weeks.

An award is therefore entered in favor of claimant, John Thomas Waggoner, in the amount of \$622.83, payable to Opal Waggoner, (mother and next friend of claimant, John Thomas Waggoner, an infant, and for his use and benefit), all of which has accrued and is payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "an Act concerning the payment of compensation awards to State employees."

(No. 3981—Claimant awarded \$2,500.00.)

HARMON ODLE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed March 25, 1947,*

WILLIAM J. LAWLER, for claimant.

GEORGE F. BARRETT, Attorney General; and C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S OCCUPATIONAL DISEASES ACT—*State and all employees of, within terms of.* In the absence of an election by the State to provide and pay compensation under Section 4 of the Workmen's Occupational Diseases Act, a right of action accrues to employee of State, sustaining injury to health by reason of disease contracted or sustained in the course of his employment proximately caused by the negligence of the State under Section 3 of said Act, as Section 5 thereof construes the term employer to include the State and the term employee to include every person in the service of the State.

SAME—*Court of Claims has jurisdiction to hear and determine claims under Section 3 of.* The Court of Claims acquires jurisdiction to hear and determine claims against the State arising under Section 3 of the Workmen's Occupational Diseases Act, by virtue of Section 6, paragraph 4 of the Court of Claims Act and the express provisions of Sections 3 and 5 of said Act. *Wheeler vs. State*, 12 C. C. R. 254.

SAME—*Statute intended to protect health of employees — violation of evidence of negligence under Section 3 of.* Chapter 16½, Section 19, Ill. Rev. Statute 1937, provides that Department of Registration and Education shall have power to promulgate rules and regulations respecting barber shops. The Health and Safety Act—Ill. Rev. Statutes 1945, Chapter 48, Paragraph 137.3, makes it the duty of every employer to provide reasonable protection for the lives, health and safety of all persons employed. Where a claimant is employed as a barber at an institution for tuberculosis patients, and is obliged to shave about 100 patients at intervals, using the same mug and the same brush, and the same pail of water, without being supplied with hot and cold running water, in the room where said barber 'service is rendered, as prescribed by the aforesaid rules and regulations of the Department of Registration and Education, the same is a violation of said Statutes by the State and constitutes negligence under Section 3 of the Workmen's Occupational Diseases Act, and a cause of action arises in favor of the employee against the State, where employment was in violation of said Statutes, and he sustains injury to his health by reason of disease contracted or sustained in the course of his said employment, as a result thereof.

DAMRON, J.

This claim is brought under Section 3 of the Workmen's Occupational Diseases Act by the above named claimant, for damages sustained as a result of contracting tuberculosis during the course of his employment by the above named respondent.

The evidence discloses that he was employed by the Kankakee State Hospital, Kankakee, Illinois, as a barber, on or about the 20th day of January 1925 and remained in the employment of the respondent until the 5th day of August 1945.

During the course of his employment, he was required to go to a ward in said institution, on occasion, where approximately 100 patients, suffering from tuberculosis in various stages were confined in their beds, and shave them. He was furnished an assistant who was a patient.

The testimony shows there was no running water in this ward and in order to shave these patients, a pail of water, one mug and one brush was furnished them. The assistant would dip the brush in the pail of water, make the lather in the mug, lather the patient and claimant would then shave him. After one patient was shaved, the assistant would again dip the brush in the pail of water then into the mug, more lather was made and applied to the next patient and this procedure was followed from patient to patient until approximately 100 had been shaved. The water was never changed, the mug was never cleaned nor the brush or razor sterilized from patient to patient.

The evidence further discloses that the claimant complained to the officials of the Kankakee State Hospital on many occasions and requested that sanitary precautions be adopted and that he be furnished equipment to

properly sterilize his instruments and appliances used by him. No precautions of any kind were directed to be taken by the authorities of said hospital nor were any taken to avoid contracting tuberculosis by claimant, while engaged in shaving these bedfast tubercular patients.

On August 5, 1945, X-rays were made of the chest of this claimant which disclosed that he was suffering from tuberculosis. He was admitted as a tubercular patient at the Livingston County Sanatorium, Pontiac, Illinois, where he is now confined. He has not been able to do any type of work since his admission to the sanatorium.

In this record, and admitted in evidence, are two letters from Dr. O. L. Bettag, Medical Director and Superintendent of the Livingston County Sanatorium. The letters being dated January 3, 1947 in part state:

"There was x-ray evidence of lung disease which, on bacteriological sputum examination, was confirmed as being caused by the tubercle bacillus. This organism was found on at least seven examinations. The last sputum found positive for tubercle bacilli was August 14, 1946. Examinations since then have been negative for this bacteria. Mr. Odle's weight increased from 145½ pounds to 205 pounds. The highest recorded weight was in May 1946. The weight at the present time is 183½ pounds.

He has been treated on bed rest, collapse of the left lung by artificial pneumothorax, and graduated up-privileges under observation. There has been definite improvement in the lung pathology. At the present time, based upon the nomenclature of the National Tuberculosis Association, his moderately advanced pulmonary tuberculosis is considered apparently arrested.

Mr. Odle's past history is free of close contact with open cases of tuberculosis except during the over twenty years of employment in the Kankakee State Hospital. No entrance x-ray examination of the chest was made in the employment of Mr. Odle. It is, therefore, reasonable to assume that he entered the State service in a condition free of active pulmonary tuberculosis, since he worked a good number of years before symptoms of the disease appeared. Assuming the Illinois Department of Registration and Education rules regarding sanitary conditions for barbers and the public were not carried out, it is medically sound to think this may have contributed toward his contracting pulmonary tuberculosis. Of greater importance, however, in my opinion,

is the fact that Mr. Odle is reported to have worked repeatedly among tuberculous patients, and these unfortunates, because of their mental disease, are often unable to consciously control their methods of coughing. It is reasonable to deduct in consequence that there must have been considerable coughing directly into the face of Mr. Odle during his many years of service. This is one of the surest ways of infecting another. Under the circumstances, it is difficult to assume a better setting for the contraction of active pulmonary tuberculosis by an employee.

Mr. Odle not only worked on the State Hospital property, but lived there most of the time of his employment. He was married approximately ten years ago and, during the first fifty percent of this time, lived with his wife on the State grounds. The remainder of the time, he lived with his wife in the city of Kankakee. Mrs. Odle however, has been examined by repeated chest x-ray study and has been found free of infectious pulmonary tuberculosis. She, therefore, could be eliminated as a source of pulmonary contagion in regard to Mr. Odle's present disease.

At the present time, Mr. Odle's right lung is partially collapsed by artificial pneumothorax. The question as to his prognosis is again a difficult one. Presumably, he will become well enough to reengage in gainful occupation. Provided there are no relapses, Mr. Odle should progress very satisfactorily. Any patient, however, having had active pulmonary tuberculosis is a potential candidate for re-activation of this disease."

It is well recognized by health authorities that barber shops or any other place where barber service is rendered is a source of spreading disease unless operated and kept in a sanitary condition at all times. And, in order to protect the public, the Legislature passed an act concerning the operation of barber shops. (Chap. 16¾ Sec. 19, Ill. Rev. Stat. 1937). It provides that the Department of Registration and Education shall be empowered to promulgate rules and regulations which shall have the force and effect of law. Pursuant to the authority granted the Department in said Act, rules were adopted and approved March 19, 1942. Among these rules are the following: Rule 7 which provides, "All barber shops or any other place where barber service is rendered, . . . shall be required . . . to supply hot and cold running water, in the room where barber service is rendered." Rule 13

which provides, “. . . all razors, shears, clippers, applicators, cups, or other instruments or appliances after being used on any patron, shall be thoroughly sterilized immediately either by boiling for three minutes in water or kept for five minutes in a solution of one of the following, namely: 50% alcohol, 5% carbolic acid, 20% formaldehyde, or other established germicidal solution. . . .”

The Health and Safety Act, (Ill. Rev. Stat. **1945**, Chap. 48, Par. **137.3**) makes it the duty of every employer to provide reasonable protection for the lives, health, and safety of all persons employed, to effectuate its purpose. In *Wheeler vs. State* **12 C.C.R. 254**, we held that the State of Illinois may properly be made respondent in the Court of Claims, in any action for damages for injury to health, resulting from a disease contracted by a state employee in the course of his employment, and proximately caused by the State's negligence, under the terms and provisions of the Workmen's Occupational Diseases Act. The State not having elected to provide and pay compensation under Section 4 of the Workmen's Occupational Diseases Act, the employee has a right of action, under Section 3 of the Act. That section provides that violation by an employer of any statute of this State, intended for the protection of the health of employees, shall constitute negligence of the employer within the meaning of the section.

The rules adopted by the Department were intended to promote the health of claimant and to prevent the spreading of contagious or infectious disease, including open tuberculosis, and should have been followed by the officials in charge of the institution. Not only for the benefit of its employees such as claimant, but for the unfortunate inmates in the ward.

It cannot be denied that the sanitary rules adopted

by the department, if followed, would lessen the exposure to claimant. That the method used by claimant in shaving the tubercular patients was unhealthy and exposed him to extra hazards which finally undermined his health. The razor used by him, the brush, mug, and water must have been germ laden after a few patients had been served, and claimant came into contact with all the above articles in shaving the patients.

Respondent having violated the rules of the Department of Registration and Education and the terms of the Health and Safety Act, which are intended for the protection of the health of employees, such as claimant, constitutes negligence under Section 3 of the Workmen's Occupational Diseases Act and therefore justifies an award for damages.

While the claimant was employed, he received a salary of \$2,400.00 per year. He is now suffering from active, moderately advanced, pulmonary tuberculosis with cavitation. He seems to be improving but he will have to remain at the Sanatorium until his tuberculous condition becomes arrested. The length of time required is uncertain. The Court is of the opinion that claimant is entitled to damages under Section 3 of the Workmen's Occupational Diseases Act in the sum of Twenty-five hundred (\$2,500.00) Dollars.

An award is therefore entered accordingly.

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(NO. 3988—Claimant awarded \$630.00.)

WILLIAM BEARD, Claimant, vs. STATE OF ILLINOIS, Respondent.

*Opinion filed March 25, 1947.*

J. CLINTON SEARLE, Attorney for claimant.

GEORGE F. BARRETT, Attorney General and WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

*WORKMEN'S COMPENSATION ACT—employee at Blackhawk State Park within provision of—where award for compensataon for loss of the first phalange of left thumb is justified.* Where an employee at Blackhawk State Park sustains accidental injuries arising out of and in the course of his employment resulting in the loss of the first phalange of his left thumb, an award may be made for compensation therefor under, Section 8 (e) of the Workmen's Compensation Act, upon compliance with the terms of the Act and proper proof of claim for same.

DAMRON, J.

This claim was filed on September 9, 1946; testimony on behalf of claimant was taken and claimant observed by Commissioner Blumenthal on December 3, 1946. The transcript was filed on December 31, 1946.

On May 18, 1946 claimant, William Beard, was employed as a foreman at the Blackhawk State Park in Rock Island County. During the forenoon of that day, he was working upon a motor-driven ventilating suction fan in the kitchen of the Inn. While standing on a bench, in reaching for some tools, he slipped and his left hand was crushed in the belt on the fan. The injury occurred in the presence of the Park Custodian who took claimant to a doctor. Later, upon being taken to the hospital, it was found necessary to amputate the thumb at the first joint.

Claimant was employed at the rate of seventy-five cents an hour, receiving an average weekly wage in excess of \$30.00. He returned to work on June 5, 1946 and at the time of the hearing, was receiving the same wages as he did prior to the accident. His compensation rate (\$15.00 per week increased by 20%) would be \$18.00 per week.

No jurisdictional question is presented. It is stipulated that respondent and claimant were operating under the provisions of the Workmen's Compensation Act and that this accident arose out of and in the course of the employment.

The respondent paid claimant's medical, surgical, and hospital expenses.

Claimant seeks compensation for the loss of the first phalange of his left thumb and the evidence establishes that he sustained such loss.

Under Section 8 (e) of the Workmen's Compensation Act, as amended, claimant is entitled to an award ~~of~~ Six Hundred Thirty (\$630.00) Dollars computed at the rate of \$18.00 per week for 35 weeks, all of which has accrued and is payable forthwith in a lump sum.

A. M. Rothbart, Court Reporting Service, 120 South LaSalle Street, Chicago, Illinois, was employed to take and transcribe the evidence in this case and has rendered a bill for such service in the amount of \$17.40. The Court finds that the amount charged is **fair**, reasonable, and customary in the community where it was rendered and said claim is allowed.

This award is subject to the approval of the Governor as provided in Section 3 of, "An Act concerning the payment of compensation awards to State employees."

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(No. 3990—Claimant awarded \$1,791.00.)

MERRILL CLAYTON, Claimant, vs. STATE OF ILLINOIS, Respondent.

*Opinion filed March 25, 1947.*

ROY A. PTACIN, Attorney, for claimant.

GEORGE F. BARRETT, Attorney General, and WM. L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*attendant at Chicago State Hospital within provision of—when award may be made for temporary total disability and permanent partial loss of use of right hand and left leg.* Where an employee of the Chicago State Hospital sustains accidental injuries, arising out of and in the course of his employment, resulting in temporary total disability and a 25% loss of use of the right hand and a 30% partial loss of use of his left leg, an award for compensation

therefor may be made, in accordance with the provisions of the Act, upon compliance by the employee with the requirements thereof.

DAMRON, J.

Complaint was filed September 27, 1946 to recover an award for injuries sustained by claimant on May 31, 1946. Evidence on behalf of claimant was heard before the Commissioner on December 5, 1946 and the transcript filed December 31, 1946.

No jurisdictional question is raised. Respondent and claimant were operating under the Workmen's Compensation Act and the accident in question arose out of and in the course of the employment.

Respondent furnished complete surgical, medical and hospital treatment. The only question to be determined is the extent of the permanent and partial loss of the use of claimant's hand and leg.

Claimant testified that on May 31, 1946 while employed as an attendant at the Chicago State Hospital, he was assigned by his supervisor to assist in unloading a carload of cabbages. As he attempted to leave the car, he slipped and fell thereby injuring his left knee and right arm. He experienced intense pain and was taken to the hospital. He was x-rayed, given treatment, and the following day sent to the Illinois Research Hospital where his arm received attention. Two days later surgery was performed on his knee. He remained at Illinois Research for about 25 days, after which he was confined to the employee's Chicago State Hospital for about three months. He was discharged and resumed work on September 4, 1946.

Since the accident he has difficulty in moving his arm; has considerable pain and his hand is tired and weak. Before the injury he experienced no such disability or discomfort. He also suffers pain in his knee especially

in climbing up or going down stairways or on street cars, and cannot straighten it out as he could before the accident. A crescent shape scar,  $7\frac{1}{2}$  inches long, appears across the knee cap.

Dr. Albert C. Field, a witness for claimant, examined him on two occasions before the hearing. He testified there is an enlargement of the left knee, some atrophy of the left thigh and that flexion was limited about 45 degrees of normal and extension about 20 degrees. Crepitation may be heard when the knee is flexed. .

The right forearm is held in silver forked deformity. There is a limitation of about 45 degrees of normal inflexion and of about half in pronation and supination of the right hand. He interpreted the x-rays of the forearm as showing an injury to the scaphoid bone of the right wrist with some osteoporosis of the styloid process of the radius. The x-rays of claimant's left knee as read by Dr. Field revealed a fracture of the patella partially reduced and held in apposition by wire sutures with some irregularity of the articulating surface. The fracture discloses a fibrous union without complete healing with bony tissue.

Dr. Louis Olsman, a resident surgeon at the Chicago State Hospital since 1938, testified on behalf of respondent. The x-rays revealed fractures of claimant's left knee and the navicular bone of the right forearm. Although, the patient showed improvement he was of the opinion that claimant, by reason of residual pain and limitation of movement, has 30% permanent disability of the left knee and about 25% permanent disability of the right wrist.

Claimant's annual earnings were \$1,740.00 which represents \$33.46 per week. He had no children under 16 years of age and therefore his weekly rate of compensa-

tion would be \$15.00 increased by 20%, as required by statute, namely, \$18.00 per week.

The record shows claimant was totally incapacitated from May 31 to September 4, 1946, a period of 13 weeks 4 days. During this period he was entitled to receive \$244.28 but was actually paid \$145.00 for June.; \$135.65 for July; \$112.26 for August and \$14.34 for three days in September, or a total of \$407.25, being \$162.97 in excess of the amount to which he was entitled.

The evidence and particularly respondent's medical witness clearly establishes that claimant has sustained a permanent and partial loss of use of the right hand to the extent of 25% and a permanent and partial loss of use of his left leg to the extent of 30%.

On the basis of this record, we make the following award: For the disability to the right hand, claimant is entitled under Section 8 (e) of the Workmen's Compensation Act to an award of \$765.00 computed at the rate of \$18.00 for 42½ weeks or 25% of 170 weeks. For the permanent, partial specific loss of use of the left leg claimant is entitled to an award of \$1,026.00 being the weekly rate for a period of 57 weeks or 30% of 190 weeks, making a total award of \$1,791.00 from which must be deducted the sum of \$162.97 representing an overpayment of money paid by respondent to claimant for temporary total compensation leaving a balance of One Thousand Six Hundred Twenty-eight Dollars (\$1,628.03) Three Cents for which an award is hereby entered in favor of claimant. Of this amount, the sum of \$738.00 has accrued as of March 21, 1947 and is payable in a lump sum forthwith. The unaccrued balance of said award amounting to \$890.03 is to be paid in weekly installments of \$18.00 for a period of 49 weeks with one final payment of \$8.03.

A. M. Rothbart, Court Reporting Service, 120 South LaSalle Street, Chicago, Illinois, was employed to take and transcribe the evidence in this case and has rendered a bill in the amount of \$45.60. The Court finds that the amount charged is fair, reasonable and customary and said claim is allowed.

This award is subject to the approval of the Governor as provided in Section 3 of, "An Act concerning the payment of compensation awards to State employees."

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(No. 3991—Claimant awarded \$5,340.00.)

LILLA M. MILLER, WIDOW OF HENRY G. MILLER, DECEASED, FOR HERSELF AND AS NEXT FRIEND AND MOTHER OF CAROLYN JANE MILLER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed March 25, 1947.*

GIFFIN, WINNING, LINDNER, NEWKIRK AND JONES, for claimant.

GEORGE F. BARRETT, Attorney General and C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

*WORKMEN'S COMPENSATION ACT—employee of the Department of Revenue within provisions of—when presence of an employee of the State in a hotel, while in the pursuance of his official business, with the knowledge and approbation of his superiors, is deemed to be a condition or incident of his employment—when employee loses his life as a result of a disastrous fire in the said hotel, said condition or incident of his employment is deemed to be the proximate cause of his death—when death results within period of employment at a place where the employee might reasonably be and while reasonably fulfilling the duties of his employment or engaged in doing same incidental to it, the same is compensable under the Act. Where it appears that employee of the Department of Revenue at the direction of his superiors went to Chicago to attend a meeting, stopping at a hotel in that city, and while there lost his life as a result of a disastrous fire which broke out in said hotel during the night, the employee is deemed to be where he might reasonably be, in pursuance of the duties of his employment; his sleeping in the hotel is deemed to be a condition of that employment, or incidental to it and said condition of employment is the proximate cause of his death and is compensable under the provision of Section*

7 (a) of the Workmen's Compensation Act, upon compliance with the requirements thereof.

*SAME—Section 3 of the Act — the provisions of the Act automatically and without election apply to the State and governmental units—and to all other employers and employees, without election, when engaged in businesses declared to be extra-hazardous. The provisions of the Act, according to Section 3 thereof, apply to all State employees, regardless of whether or not they are engaged in extra hazardous enterprises or businesses.*

ECKERT, C. J.

This suit is brought by Lilla M. Miller, the widow of Henry G. Miller, in her own behalf, and on behalf of her minor daughter, Carolyn Jane Miller, against the State of Illinois, under Section 7a of the Workmen's Compensation Act.

The decedent, Henry G. Miller, was employed by the respondent at the time of his death, and had been so employed for several years prior thereto, in the Department of Revenue, as supervisor of the Rules and Regulations Division of the department. Mr. Miller's employment occasionally required him to travel, and to be away from his main office, which was in the Illinois Building; at Springfield, Illinois.

Mr. Miller supervised the rules and regulations made under the various tax acts of the State of Illinois administered by the Department of Revenue. From June 3rd to June 6th, 1946, the National Tax Association held its annual convention in the City of Chicago, Illinois. Mr. Miller went to Chicago on June 2, 1946, at the direction of his superior, for the purpose of attending this convention, and conferring with the director of his department and other officers. On June 4th Mr. Miller attended the meeting of the National Tax Association, and was in conference with his director and other members of the Department of Revenue. With the knowledge and ap-

proval of the department, he was staying at the LaSalle Hotel. On June 5th he was again to attend meetings of the National Tax Association, and have further official conferences. Early in the morning of June 5th, a disastrous fire occurred at the LaSalle Hotel, in which Mr. Miller lost his life. He left the claimant, Lilla H. Miller, his widow surviving, and one child, Carolyn Jane Miller, age eleven years.

The Director of Revenue had immediate notice of Mr. Miller's death, and demand for compensation was made by the claimant within six months thereafter.

There is no dispute as to the facts. The respondent, however, raises two questions of law:

1. Is the injury to or death of an employee of the State of Illinois, travelidg as required by his employment, compensable under the Workmen's Compensation Act if the injury is sustained in a fire occurring while the employee is in his place of lodging and not during his ordinary working hours, and
2. Is the injury to or death of an employee of the Department of Revenue, arising out of and in the course of the employment, not in itself an extra-hazardous undertaking, compensable under the terms of the Workmen's Compensation Act.

The respondent has filed a very able and exhaustive brief, from which it appears that the compensability of an employee, injured by a fire in the nighttime, while in his place of lodging, and while traveling as required by his employment, is a question of first impression in the State of Illinois. Although there are numerous Illinois cases in which employees, required to travel, have been held entitled to compensation for injuries arising out of and in the course of the employment, (*Illinois Publishing Company v. Industrial Commission*, 299 Ill. 189; *Solar-Sturges Manf. Co. v. Industrial Cornmission*, 315 Ill. 352; *Porter v. Industrial Commission*, 352 Ill. 392; *City of Chicago v. Industrial Commission*, 389 Ill. 592), none is concerned with an injury or death occurring in a hotel, in

the nighttime, when the employee was no longer literally at work.

In other jurisdictions, however, many courts have held that such an employee is entitled to compensation. In *Souza's Case*, (316 Mass. 332, 55 NE (2nd) (611)), it was held that an employee's death, in a fire, occurring while he was asleep in a rooming house, arose out of and in the course of his employment. The court there pointed out that the question was whether the employment brought the employee in contact with the risk that in fact caused his death. And the court refused to differentiate between cases in which the employee selected the place of lodging, from cases in which the selection was made by the employer. On page 613, the court said:

"But it seems to us that the connection between the employment and the risk is substantially the same whether the employer or the employee selects the particular place, ~~as~~ long as lodging away from the employee's home or regular place of abode is provided by the employer as an incident of the work, and is required by the terms of the employment, and as long as the employee selects a place that fulfills the requirements of the employment and that is otherwise proper in the sense that it involves no unnecessary risk."

In the case of *Thiede vs. Searle & Co.*, 278 Mich. 108, 270 NW 234, an employee, injured by fire in the place of his lodging, was held entitled to compensation, and the court based its decision on the analogous case of an employee injured while using a public conveyance. The Supreme Court of Michigan said:

"Counsel for both parties cite us many cases of other courts, relating to similar accidental injuries, with their respective *pro* and *con* decisions. But we do not find it necessary to seek further than our own decisions for controlling precedent. We think our holding in *Widman v. Murray Corp. of America*, 245 Mich. 332, 222 NW 711, 712 by analogy, applies with equal force to the case at bar. There the plaintiff had been sent by his employer on a business trip, and while sitting on the observation platform of a passenger train, was hit in the eye by a cinder. The defendant there claimed that the injury did not arise out of the employment. We said:

“‘It was a condition of his employment that he (plaintiff) should be on this train, which turned out to be a place of danger. The risks to which he was exposed from riding on trains from place to place as he was directed were incidental to his employment. He was required to ride on trains in the performance of his master’s business. This condition of the employment was the proximate cause of his injury. These undisputed facts fix the responsibility of the defendant.’

“In the instant case, it was a condition of decedent’s employment that he should stay at the hotel, which turned out to be a place of danger. The risks to which he was exposed in staying at hotels as required by his position were incidental to his employment. He was required to stay at a hotel in Lansing in the performance of his master’s business. This condition of the employment was the proximate cause of his injury. These undisputed facts fix the responsibility of the defendants \* \* \*.”

In the case of *Texas Emp. Ins. Ass’n vs. Harbuck*, 73 SW (2d) 113, the Court of Civil Appeals of Texas held squarely that fatal injuries to a traveling salesman, sustained when he attempted to escape from a burning hotel at which he was staying for the night, arose out of and in the course of his employment even though he was not at the time actually engaged in the pursuit of his employer’s business. The court pointed out that at the time of the injury the employee was doing the very thing which in the performance of his duties, he should have done, and was expected by his employer to do, occupying a place of rest, his room in the hotel. The employee’s stopping at a hotel was a necessary element in the performance of his duty. See also *Stansberry vs. Monitor Stove Co.*, 150 Minn. 1, 183 NW 977, and *Harinel vs. Hall-Thompson Co.*, 98 Conn. 753, 120 A. 603.

This court is of the opinion that employees, required to travel by their employment, are entitled to the benefits of the Workmen’s Compensation Act for injuries resulting from a fire in their place of lodging, (unless the employee is injured while doing some act outside the scope of the provisions of the Act), and that the rule, as established by these various decisions, is within the meaning

and intent of the Workmen's Compensation Act of this State. As was pointed out by the Supreme Court of Illinois in *Porter vs. Industrial Commission*, supra, the controlling factor in determining whether an accidental injury arose out of and in the course of the employment is whether the employee was in the sphere of his duty when the accident occurred. If an injury occurs within the period of the employment, at a place where the employee might reasonably be, and while he was reasonably fulfilling the duties of his employment, *or engaged in doing something incidental to it*, he is entitled to compensation.

Rest is certainly incidental to an employment that takes an employee away from home overnight. Here, as in the Porter case, the employee had gone to another city in the service of his employer; he had performed the duties assigned to him. The injury occurred, in the Porter case, while the employee was riding on an inter-urban train, a proper means of transportation. The injury occurred in this case while the employee was seeking necessary rest in a suitable and proper place. The lurching of the car in the Porter case was held to be one of the risks incidental to the employment. The burning of the La Salle Hotel was a like risk in this case.

As the court said in the Thiede case, supra, it was a condition of decedent's employment that he should stay at a hotel; he was required to stay at a hotel in Chicago in the performance of the respondent's business. **The** condition of his employment was the proximate cause of his death. The court therefore finds that the death of Henry G. Miller, arose out of and in the course of his employment.

Whether the injury to or death of an employee of the Department of Revenue, arising out of and in the course of his employment, not in itself an extra-hazard-

ous undertaking, is compensable under the terms of the Workmen's Compensation Act, necessitates a consideration of a case recently decided by the Supreme Court of Illinois : *County of Christian vs. Industrial Commission*, 391 Ill. 475. The respondent contends that the court in that case held that a county employee was not within the provisions of the Workmen's Compensation Act, and not entitled to its benefits, where the county had not elected to come under the act, and where the employee was not herself engaged in an extra-hazardous business or enterprise; that therefore an employee of the State, not himself engaged in an extra-hazardous enterprise, is not within the Act.

An analysis of the opinion filed in the case, however, indicates that it is not so far reaching. Christian county had not elected to come within the provisions of the Workmen's Compensation Act, and the court, at page 477, points out that liability of the county, if any, under the act, must arise by reason of the automatic application of the statutory provisions, and that the claimant relied upon the provisions, of sub paragraph 8 of Section 3 to bring the case within the act. Under this sub-paragraph, an employer automatically comes within the act if his enterprise is one on which statutory or municipal ordinance regulations are imposed for the regulating, guarding, use or placing of machinery or appliances, or for the protection and safeguarding of the employees or the public therein. From the opinion, it is obvious that claimant based her entire case upon the theory that the County of Christian came within the provisions of the Workmen's Compensation Act because the court house in which she maintained her office was subject to statutory and municipal ordinance regulations.

The statutory and municipal ordinance regulations

upon which the claimant relied, however, were not such regulations as were for the protection and safeguarding of employees or the public against accidental injuries or death; they were not regulations imposed upon the enterprise of the employer. The actual holding of the court is found in the next to the last paragraph of the opinion, (p. 486) ;

“We are of the opinion that this record does not disclose that the enterprise in which defendant in error was employed, at the time she sustained the accidental injuries for which she is claiming compensation, was subject to statutory or municipal ordinance regulations within the meaning of sub-paragraph 8 of-section 3 of the Workmen’s Compensation Act, **and** therefore the award in this case must set aside for **want of** jurisdiction in the commission to make it.”

In other words, the case was presented to the court, by the claimant; on the theory that the county came within the Act because of certain statutory or municipal ordinance regulations, and the court found specifically that these statutory or municipal ordinance regulations were not such regulations as were contemplated by the Act. The case was not presented to the court, nor decided by the court, on any other theory. The court did not decide whether, under the provisions of Section 3 of the Workmen’s Compensation Act, the county, as a governmental unit, is, or is not, automatically subjected to the provisions of the Act; the court did not decide whether, under the provisions of the Workmen’s Compensation Act, the county, as an employer engaged in extra-hazardous enterprises, is, or is not, automatically subjected to the provisions of the Act. It is true that there is dictum in the opinion indicating that the act does not apply to a county unless the county is an employer engaged in an extra-hazardous enterprise, and unless the employee in question is engaged in such an extra-hazardous enterprise. The actual decision in a case, and dicta included in

an opinion, are separate and distinct. A decision is controlling and should be followed. Dicta may and should be disregarded. In the history of English and American law, the easy quotation of dicta, rather than the analysis of a decision, has only served to confuse and not clarify precedents.

Furthermore, a long line of decisions by the Illinois Supreme Court, prior to the Christian County case, held the act applicable to employees regardless of the character of the work being performed. In the case of *Illinois Publishing Company vs. Industrial Commission*, supra, an advertising solicitor for a publishing company was killed in an automobile accident while calling on prospects for the company. The company operated printing presses and other machinery regulated by municipal ordinances, admittedly an extra-hazardous activity. The court there held that since the company was engaged in an extra-hazardous enterprise, the act applied to an employee of the company regardless of whether or not he was employed in the department of the company which was extra-hazardous. The court stated, at page 488:

"This compulsory compensation Act is general in its application and embraces all employers and their employees engaged in businesses or enterprises declared by the statute to be extra-hazardous. The language of the Act is clear and is not open to construction. It means just what it says—the provisions of this Act shall apply automatically and without election to all employers and their employees engaged in enterprises or businesses declared to be extra-hazardous—and the court has no right to read into the statute words that are not found therein, either, by express inclusion or by fair implication."

In the case of *McNaught vs. Hines*, 300 Ill. 167, the court rejected the contention that the Workmen's Compensation Act was not intended to include employees as within the Act unless they were actually engaged in extra-hazardous employment at the time of the injury. In *Porter vs. Industrial Commission*, supra, it was held

that no distinction existed between an employee doing extra-hazardous work and one whose work is not extra-hazardous. In the case of *Marshall Field and Co. vs. Industrial Commission*, 305 Ill. 134, it was admitted that the employer used power-driven machinery, dynamos, and elevators in operating its mercantile establishment which were subject to statutory regulation as to their use and location. The court stated :

“The act therefore applied automatically to the employer by virtue of paragraph 8 of Section 3, and the act applies to all employees in the various kinds of hazardous business included in that section, regardless of the kind of work in which the employee is engaged.”

To the same effect is the case of *Ascher Brothers Amusement Enterprises vs. Industrial Commission*, 311 Ill. 258, and *Figgins, Commissioner of Highway, vs. Industrial Commission*, 379 Ill. 75.

In view of this long line of decisions, in which the Supreme Court refused to distinguish between employees engaged in extra-hazardous enterprises, and employees not so engaged, the decision in the Christian County case certainly should be confined to its specific holding. Dictum in that opinion, or in any opinion, cannot over rule previous decisions of the same court. This court believes that the Christian County case is properly limited to the holding that the regulations relied upon by the claimant were not such as were contemplated by sub-section 8 of Section 3. Had the claimant relied, either upon the theory that the Act applied automatically to the county as a governmental unit, or applied automatically to the county because it was engaged, as any other employer, in an enterprise or business declared to be extra-hazardous, a contrary result might well have been reached.

Section 3 of the Illinois Workmen's Compensation Act provides that the Act should **apply** automatically

and without election to the State, county, city, town, township, incorporated village or school district, body politic or municipal corporation, and to all employers and all their employees, engaged in any department of the businesses or enterprises therein declared to be extra-hazardous. This court has interpreted that section to mean that the act applies automatically and without election to the state, on the theory that there are two classes of employers: the act applies automatically to the one class, governmental units, and applies automatically and without election to all other employers and employees, a second class, when engaged in businesses declared to be extra-hazardous. This interpretation is in accord with legislative history. The automatic provisions of the Act were added by amendment in 1917, but at that time contained no reference to the State or other governmental units, providing only that the Act should apply automatically to all employers and their employees engaged in any of the enterprises or businesses declared to be extra-hazardous. The State and other governmental units were specifically named in Section 4 of the Act as employers, and employees of these governmental units were named in Section 5 of the Act as employees. By the amendment of 1919, the governmental units were added to Section 3. The only purpose of this addition would have been to create two classes, for the Act already applied to these governmental units and their employees as it applied to any other employer; the only purpose could have been to create a class of governmental units to which the Workmen's Compensation Act applied automatically, regardless of the character of work carried on by the employees. Any other interpretation makes the amendment of 1919 to Section 3 of no effect.

The court, therefore, is still of the opinion that the

provisions of the Illinois Workmen's Compensation Act apply automatically and without election to the State as a governmental unit, and that the provisions of the Act are applicable to state employees, regardless of whether or not they are engaged in an extra-hazardous enterprise or business. Henry G. Miller, as an employee of the Department of Revenue, comes within, and was entitled to the benefits of that Act. Claimant is entitled to an award on account of the death of Henry G. Miller, whose death arose out of and in the course of his employment by the respondent.

Mr. Miller's earnings during the year immediately preceding his death were in excess of \$6,200.00, so that claimant is entitled to award in the sum of \$4,450.00. Since the death occurred subsequent to July 1, 1945, this must be increased 20%, making a total award of \$5,340.00. The weekly compensation rate is the maximum of \$15.00, increased 20%, or \$18.00 per week.

Award is therefore entered in favor of the claimant, Lilla M. Miller, in the amount of \$5,340.00 to be paid to her as follows :

\$ 756.00, accrued, is payable forthwith;

\$4,584.00, is payable in weekly installments of \$18.00 beginning on the 25th day of March, 1947, for a period of 254 weeks, with an additional final payment of \$12.00.

All future payments being subject to the terms and conditions of the Workmen's Compensation Act of Illinois, jurisdiction of this cause is specifically reserved for the entry of such further orders as may from time to time be necessary.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3994 — Claimant awarded \$108.00.)

LENA F. HOPPOCK, Claimant, *vs.* STATE OF ILLINOIS; Respondent.

*Opinion filed March 25, 1947.*

CLAIMANT, *pro se.*

GEORGE F. BARRETT, Attorney General, and WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*employee Illinois Public Aid Commission. within provisions of—when award may be made for necessary medical services—provided by claimant with the knowledge and approbation of employer.* Where an employee of the Illinois Public Aid Commission sustains accidental injuries, arising out of and in the course of her employment, and thereafter procures medical services with the full approval of her employer, an award may be made to compensate said claimant for the necessary and reasonable medical expenses so incurred.

SAME—Inasmuch as the Illinois Public Aid Commission has funds available and on deposit with the State Treasurer for payment of compensation awards, the Court specifically directs the payment of the above award from the said funds.

ECKERT, C. J.

The claimant, Lena F. Hoppock, seeks an award under the provisions of 'the Workmen's Compensation Act in the amount of One Hundred and Eight Dollars (\$108.00) for medical expenses which she incurred as the result of a fall, while she was employed by the Illinois Public Aid Commission.

Claimant's duties required her to interview, and investigate the eligibility of applicants seeking various types of public assistance. On February 8, 1946, while in the performance of her duties, she visited the home of an Old Age Pension recipient in Kewanee, Illinois. As she left the premises, she slipped on the top step, and fell to the pavement, injuring her leg.

Immediately following the accident she was taken to her home, and Dr. H. R. Varney was called. He ordered the application of ice packs, and the following morning

had claimant taken to the hospital for x-rays. She then returned to her home, but owing to the severity of the injury, it was necessary for her to enter the hospital on February 12, 1946, where she remained for a two week period.

Dr. Varney treated claimant continuously from February 8, 1946 to March 13, 1946. While she was in the hospital it was necessary for him to incise and drain coagulated blood from the injured tissues. Dr. Varney's charges for his services amounted to Fifty-eight Dollars (\$58.00). On discharging claimant, on March 15, 1946, he referred her to Dr. L. L. Spanabel for diathermy and other special treatment to restore circulation in her leg. Dr. Spanabel gave claimant twenty of these treatments, for which his charges were Fifty Dollars (\$50.00).

The respondent did not provide the necessary medical services, but permitted claimant to secure such services with its full approval. The services were reasonably required, and the excellent results achieved, obviated any additional claim for disability. The reasonableness of the charges is not questioned, and claimant is entitled to an award.

An award is therefore entered in favor of Dr. H. R. Varney in the amount of Fifty-eight Dollars (\$58.00), and an award is entered in favor of Dr. L. L. Spanabel in the amount of Fifty Dollars (\$50.00), both of which are payable forthwith.

Inasmuch as the Illinois Public Aid Commission has funds available for payment of compensation awards, the court specifically directs the payment of the above awards by the State Treasurer, as Trustee Ex-Officio, from the funds heretofore deposited with the State Treasurer pursuant to Section 181a, Chapter 127, Revised Statutes of Illinois. Payment of these awards from

this fund is requested by the Illinois Public Aid Commission, and such request constitutes the necessary statutory direction.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

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(No. 3995—Claim denied.)

MARZELLA SMITH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed March 25, 1947.*

ROSENBAUM and ROSENBAUM, for claimant.

GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

**CHICAGO PARK DISTRICT**—*State not responsible for liabilities of.* Article IV of Section 20 of the Constitution of the State of Illinois of 1870, provides that the State has no responsibility for the debts or liabilities of such bodies as The Chicago Park District; they are municipal corporations which can sue or be sued in courts of general jurisdiction.

**JURISDICTION**—*where recourse can be had to courts of general jurisdiction—and claimant fails to avail himself thereof—this Court is without jurisdiction to hear claim.* The Court of Claims Act of 1945 (Chap. 37, Par. 439.8 Ill. Rev. Statutes 1945) does not extend the jurisdiction of this Court to include suits against municipal corporations. Claims against a municipal corporation, or other governmental entity, which can sue or be sued in courts of general jurisdiction, are not claims against the State of which this Court can take cognizance.

ECKERT, C. J.

The claimant, Marzella Smith, on October 21, 1946, filed her complaint in this cause alleging that on March 29, 1946 she used a parkway sidewalk, in the Chicago Park District, known as South Parkway, at 48th Street, Chicago, Illinois, to enter a drug store; that in the darkness, she stumbled and fell over an unilluminated concrete post, or jagged edge projecting from the sidewalk

on the parkway, injuring her left knee and leg. Claimant further alleges that she is a house wife in care of children, earning an average of \$2,000.00 per year; that she has spent \$500.00 for hospital, medical treatment, care, and attendance, and will be required to spend further moneys in attempting to be cured of the injury; that she still suffers great pain; and that the injury is the result of the negligence of the Chicago Park District. She alleges that the Chicago Park District is a departmental function of the State of Illinois. She seeks damages in the amount of \$2,500.00.

The respondent has filed a motion to dismiss the complaint on the ground that this court is without jurisdiction since the complaint sets forth a claim against the Chicago Park District, and not against the State of Illinois.

The Chicago Park District is a municipal corporation with power to sue and to be sued. The cause of action in this case is based upon its alleged negligence. The State of Illinois is precluded from assuming liability for a claim against such a municipal corporation. Article IV, Section 20 of the Constitution of 1870, provides:

“The State shall never pay, assume or become responsible for the debts or liabilities of, or in any manner, give, loan or extend its credit to or in aid of any public or other corporation, association or individual.”

Claimant's theory, that municipal corporations and other governmental entities, are such agencies and arms of the State, that the State is responsible for claims against them, has been presented to this Court upon many occasions. The Court, however, has consistently held that it has no jurisdiction to hear and determine such claims: and that the State has no responsibility for the debts or liabilities of such bodies. *Monaco et al. vs. State of Illinois*. 9 C.C.R. 90; *Jones vs. State*, 10 C.C.R. 104.

In the case of *Price vs. State*, 8.C.C.R. 85, this court refused to take jurisdiction of a claim based upon the negligence of the Board of Park Commissioners of Lincoln Park, one of the predecessors of the Chicago Park District. At page 86 of the opinion the court stated:

"It has frequently been held by the courts of this State that the Board of Park Commissioners is not liable for injuries occurring in parks. (*Stein, vs. West Park Commissioners*, 247 Ill. App. 479; *Hendricks, Admx. vs. Urbana Park District*, 265 Ill. App. 102; *Love vs. Glencoe Park District*, 270 Ill. App. 117.)

"Claimant apparently takes the position that if the Board of Park Commissioners is not liable, the *State must* be liable, but such is not the law.

"The same position was taken by the claimant in the case of *Raffaele Trombello, et al., Admrs., etc. vs. Xiate*, No. 2237, decided at the January Term, A. D. 1934 of this court, in which the authorities cited by the claimant in this case were considered, and the conclusion 'reached that the declaration there did not allege any liability on the part of the State. The court must necessarily arrive at the same conclusion in this case and inasmuch as there is no legalliability on the part of the State under the facts as set forth in the complaint, the court has no jurisdiction to make an award.

"The plea to the jurisdiction is therefore sustained and the case dismissed."

In the case of *Monaco vs. State*, 9 C.C.R. 90, the Court of Claims sustained a motion to dismiss because it had no jurisdiction of a claim of an individual against a municipal corporation and made the following statements :

"We are further compelled to take judicial notice of the fact that the Commissioners are officers of a municipal corporation, capable of suing and being sued. This court has repeatedly held that it has no jurisdiction under 'An Act to create the Court of Claims and prescribe its powers and duties,' to entertain suits filed by individuals against municipal corporations as such individuals must seek their legal remedy in courts of record in this State. Further, that such municipal corporations as the Board of Park Commissioners of Lincoln Park, the West Chicago Park Commissioners, and the South Park Board of the City of Chicago, and Boards of Education of cities of school districts, are not arms or agencies of the State government so as to bring them within the jurisdiction of the Court of Claims."

The Court of Claims Act of 1945 (Chap. 37, Par. 439.8, Illinois Revised Statutes, 1945) does not extend the jurisdiction of this court to include suits against municipal corporations. The jurisdiction of the Court, by that act, is limited to claims against the State. Claims against a municipal corporation, or other governmental entity, which can sue or be sued in courts of general jurisdiction, are not claims against the State of which this Court can take cognizance. Claimant's argument should be directed to the legislature rather than to the Court of Claims.

Motion of Respondent is granted. Case dismissed.

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(No. 3996—Claimant awarded \$4,800.00.)

MARGARET L. TAYLOR, WIDOW OF G. G. TAYLOR, DECEASED,

Claimant, vs. STATE OF ILLINOIS, Respondent.

*Opinion filed March 25, 1947.*

CLIFFORD M. BLUNK, for claimant.

GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

**WORKMEN'S COMPENSATION ACT**—*employee Chief of the Division of Venereal Disease Control in the Department of Public Health within provisions of—when. presence of an employee of the State in a hotel, while in the pursuance of his official business, with the knowledge and approbation of his superiors, is deemed to be a condition or incident of his employment—when employee loses his life as a result of a disastrous fire in, the said hotel, said condition or incident of his employment is deemed to be the proximate cause of his death—when death results within period of employment at a place where the employee might reasonably be and while reasonably fulfilling the duties of his employment or engaged in doing same incidental to it, the same is compensable under the Act.* Where it appears that employee of the Department of Public Health at the direction of his superiors went to Chicago to attend a meeting, stopping at a hotel in that city, and while there lost his life as a result of a disastrous fire which broke out in said hotel during the night, the employee is deemed to be where he might reasonably be, in pursuance of the duties of his employment; his sleeping in the hotel

is deemed to be a condition of that employment, or incidental to it and said condition of employment is the proximate cause of his death and is compensable under the provisions of Section 7 (a) of the Workmen's Compensation Act, upon compliance with the requirements thereof.

The identical question presented here was before this Court and decided in *Miller vs. State of Illinois*, ante, this volume, and what was said in that case is applicable here, and permits of no distinction between an employee of the Department of Revenue and an employee of the Department of Public Health.

### ECKERT, C. J.

This suit is brought by Margaret L. Taylor, the widow of G. G. Taylor, deceased, against the State of Illinois, under Section 7a of the Workmen's Compensation Act.

The decedent, G. G. Taylor, was employed by the respondent at the time of his death, and had been so employed for several years prior thereto, as Chief of the Division of Venereal Disease Control in the Department of Public Health. His employment occasionally required him to travel, and to be away from his main office, which was at Springfield, Illinois.

The United States Public Health Service scheduled a meeting for discussion of methods of venereal disease control for June 4, 1946, at the LaSalle Hotel, in the City of Chicago, Illinois. Mr. Taylor was authorized and directed by his department to attend this meeting, and to confer with Dr. T. J. Bauer, the Venereal Disease Control Officer of the Chicago Board of Health.

On June 3, 1946, Mr. Taylor went to Chicago and registered at the LaSalle Hotel with the knowledge and approval of his department. He attended the meeting on June 4th, and remained at the hotel that night for the conference with Dr. Bauer on the following day. Early in the morning of June 5th, a disastrous fire occurred at the hotel, in which Mr. Taylor lost his life. He left the claimant, Margaret L. Taylor, his widow, surviving.

The Director of Public Health had immediate notice of Mr. Taylor's death, and demand for compensation was made by the claimant within six months thereafter.

There is no dispute as to the facts. The respondent, however, raises two questions of law:

1. Is the injury to or death of an employee of the State of Illinois, traveling as required by his employment, compensable under the Workmen's Compensation Act if the injury is sustained in a fire occurring while the employee is in his place of lodging and not during his ordinary working hours, and
2. Is the injury to or death of an employee of the Department of Public Health, arising out of and in the course of the employment, not in itself an extra-hazardous undertaking, compensable under the terms of the Workmen's Compensation Act.

Both of these questions have been answered in the affirmative in the opinion rendered by this court in the case of *Lilla M. Miller vs. State of Illinois*, No. 3991, 16 C.C.R. The decision in that case is controlling here, and permits of no distinction between an employee of the Department of Revenue, and an employee of the Department of Public Health.

The court, therefore, finds, that the death of G. G. Taylor arose out of and in the course of his employment, and that, as an employee of the Department of Public Health, he was entitled to the benefits of the Workmen's Compensation Act of this State.

Mr. Taylor's earnings during the year immediately preceding his death were in excess of \$7,000.00, so that claimant is entitled to an award in the sum of \$4,000.00. Since the death occurred subsequent to July 1, 1945, this must be increased 20%, making a total award of \$4,800.00. The weekly compensation rate is the maximum of \$15.00, increased 20%, or \$18.00 per week.

Award is therefore entered in favor of the claimant, Margaret L. Taylor, in the amount of \$4,800.00, to be paid to her as follows:

\$ 756.00, accrued, is payable forthwith;  
 \$4,044.00, is payable in weekly installments! of \$18.00 beginning on  
 the 25th day of March, 1947, for a period *of* 224 weeks,  
 with an additional final payment *of* \$12.00.

All future payments being subject to the terms and conditions of the Workmen's Compensation Act of Illinois, jurisdiction of this cause is specifically reserved for the entry of such further orders as may from time to time be necessary.'

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

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(No. 4004—Claimant awarded \$500.98.)

BEN WEISS AND HELEN WEISS, ETC., vs. STATE OF ILLINOIS.

*Opinion filed March 25, 1947.*

EDWIN M. KATZ, for claimants.

GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, 'for respondent.

**MOTOR FUEL TAX LAW**—*no tax assessed against distributors under—agent of State in collecting tax.* The Motor Fuel Tax Law assesses no tax against a distributor licensed thereunder, but imposes upon him the obligation of collecting such tax from the dealer and in such collection he acts as the agent of the State in that behalf.

**SAME**—*overpayment of amount due from distributor—not payment of tax—made under mistake of fact—may be recovered.* Where motor fuel distributor through error, pays State motor fuel tax an amount in excess *of* that collected or due from dealers to whom fuel was sold by it, such excess is not payment of a tax from distributor, but payment of money, made under mistake of fact and an award may be made for refund *of* such excess amount so paid.

**DAMRON, J.**

Claimants seek an award of \$500.98 as a refund of an overpayment in the remittance of motor fuel tax. By

stipulation of the parties, the report of the Department of Revenue, filed herein, constitutes the record. It shows that claimants were doing business as co-partners under the name of Dixie Gas Company and were licensed as distributors under the Motor Fuel Tax Law on November 15, 1945 under license No. 2509, all operations being conducted in Chicago, Illinois.

Under date of December 18, 1945, claimants made a report to the Department of Revenue for the month of November 1945 which showed no transactions. Under date of January 14, 1946, the distributor reported for the month of December 1945. The report showed an opening inventory as of December 1, 1945 of 17,040 gallons of motor fuel. The report computed tax on motor fuel on hand as of December 1, 1945, and on all received in December 1945 except 19,686 gallons on hand the 31st of December which was forwarded to January 1946 accounting.

The beginning inventory of 17,040 gallons, reported on the distributor's December 1945 report, was marked for investigation by the Department for the reason the distributor's reports for December 1945 and January 1946 accounted for all motor fuel on hand as of December 1, 1945, as above stated, and all received in December 1945 and January 1946. The report further divulges that the motor fuel tax was paid by claimants to the Department on all sales in these two months. As of January 31, 1946, a new license certificate was issued to claimants doing business as the North Side Petroleum Company, this license was numbered 2539 and the old license numbered 2509 was cancelled.

The report shows that the investigation of the distributor's records and cross checking of receipts from November 15, 1945 to January 31, 1946 disclosed that the

November report above referred to was in error. It was amended, according to the departmental investigation, so as to report the inventory as of November 15, 1945, and the receipts from that date to November 30, 1945 all being tax paid. The amended November report also showed that as of November 30, 1945, the distributor had on hand, tax paid, 17,040 gallons.

An amended report was also made for the month of December 1945 showing that the said 17,040 gallons was deductible from the accounting thus correcting the amount of tax due for December 1945 from \$2,626.22 to \$2,124.24 which shows an overpayment to the Department by the claimants in the amount of \$500.98.

The purpose of the Motor Fuel Tax Law as set forth in the Act, is "to impose a tax upon the privilege of operating each motor vehicle upon the public highways of this State such tax to be based on the consumption of motor fuel in such motor vehicle," etc.

It is based upon the amount of motor fuel consumed in each motor vehicle. The tax is paid in the last analysis by the ultimate purchaser but is collected in the first instance by the dealer who is required to pay over to the State all moneys so collected by it.

The money which is collected by the dealer and paid by it to the State is not the proceeds of a tax assessed against such dealer. The collection of the tax is made through the instrumentality of the dealer, who acts as an agent of the State in that behalf.

This case, therefore, is essentially different on the facts from the cases which involve the voluntary payment of an illegal or excessive tax.

Where money is paid to another under the influence of a mistake of fact, that is, on the mistaken supposition of the existence of a specific fact which would entitle the

other to the money, and the money would not have been paid if it had been known to the payer that the fact was otherwise, it may be recovered. *Mitchell and Hills vs. State*, 12 C.C.R. 317.

The record discloses that the payment made by this claimant in this case clearly was made under a mistake of fact and therefore claimant is entitled to the return of the amount of money overpaid by it. An award is therefore entered in favor of claimant in the sum of Five Hundred Dollars and Ninety-Eight Cents (\$500.98).

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(No. 3713—Claim denied.)

GENEVIEVE SAUERHAGE, Claimant, *vs.* STATE OF ILLINOIS,  
Respondent.

*Opinion filed April 24, 1947.*

HUGH J. DOBBS, for claimant.

GEORGE F. BARRETT, Attorney General, and C.  
ARTHUR NEBEL, Assistant Attorney General, for re-  
spondent.

**DEDICATION OF PROPERTY FOR PUBLIC USE**—*construction of public improvement thereon—effect of Deed of Dedication is to release claim for damages thereto. Where private property, is acquired by Deed of Dedication, for the purpose of constructing public highways, instead of by condemnation, the payment of the consideration agreed upon, has the same effect as the assessment of damages in condemnation proceedings.*

BERGSTROM, J.

By the complaint, which was filed on May 1, 1942, claimant alleges, in substance, that she is the owner of the property described as Lot 14, in Block 25, The Consolidated Coal Company of St. Louis First Subdivision of lands in Sections 9 and 10, in Township 9 South, Range 2 West of the Third Principal Meridian, in Jackson County, Illinois. That in the construction of F.A. Route

144, the elevation of the land used for said highway was changed and altered and the natural surface drainage of said land was changed and the sub-surface drainage was stopped and blocked or changed and altered. That a ditch was dug along said highway and along the front of claimant's property into which water from said highway and other land drained and accumulated without adequate draining facilities being provided in the construction of said highway. That on the night of October 16, 1941 rain water accumulated in said ditch from said highway and other land and backed up and remained in said ditch until the pressure or natural seepage thereof established a new channel underneath the surface of claimant's property, by which said channel water flowed and seeped back to and against the foundation of claimant's home located on said property to a height of three feet in the basement thereof, covering canned goods and personal property stored therein, and the house became out of plumb and line and otherwise damaged.

Claimant seeks an award for \$1,075.00 for damages sustained.

The record shows that claimant did, on April 25, 1940, execute a Deed of Dedication to the People of the State of Illinois of a part of the property herein claimed to be damaged, for the purpose of a public highway, and which Deed of Dedication was recorded in the office of the Clerk and Ex-officio Recorder for Jackson County, Illinois on April 25, 1940 as document No. 16644. The land described in said Deed of Dedication and shown on the plat attached thereto is an integral part of the land described in claimant's complaint.

Where an owner conveys property for public use, the consideration received for such conveyance covers all damages for property taken and also damages for injury to adjacent property not taken, the same as an

assessment of damages for property taken through a condemnation proceeding would cover.

*Lepska v. State of Illinois*, 10 C. C. R. 170;

*Lampp v. State of Illinois*, 6 C. C. R. 349;

*Baker v. State of Illinois*, 9 C. C. R. 115;

*Chicago, Rock Island & Pacific;*

*Railway Co., v. Smith*, 111 Ill. 363;

*Siekman v. State of Illinois*, 10 C. C. R. 286.

Claimant signed and delivered the Deed of Dedication and was paid the consideration given therefor. She was at that time, and is now, the owner of the adjacent property claimed to be damaged. From the record in this case the general proposition of law above stated, in our opinion, applies to this claim. Accordingly, it should be denied.

The claim is therefore denied.

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(No. 3908—Claimant awarded \$18.50.)

ARCHIE, BROWN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.  
*Opinion filed April 24, 1947.*

CLARENCE B. DAVIS, Attorney for claimant.

GEORGE F. BARRETT, Attorney General, and C.  
ARTHUR NEBEL, Assistant Attorney General, for respondent.

**WORKMEN'S' COMPENSATION ACT—when award may be made under.**  
Where employee of State sustains accidental injuries arising out of and in the course of his employment an award for medical services rendered may be made in accordance with the provisions of the Act, upon compliance by the employee with the terms thereof

DAMRON, J. .

This is a claim for benefits under the Workmen's Compensation Act.

The record consists of the following complaint, departmental report, rule to show cause, transcript of evidence, amended complaint, statement, brief and argument

of claimant, transcript of additional evidence taken on December 27, 1946, claimant's exhibits 1, 2, and 3, commissioner's report, and reporter's bill for taking evidence.

The evidence discloses that the above named claimant, Archie Brown, on the 11th day of April 1944 was employed by the Secretary of State as a janitor, that on the last mentioned date, the claimant was a resident of Springfield, Illinois.

The record further discloses that this claimant while engaged in carrying boxes weighing approximately 75 lbs. each from a State garage on 2nd Street to another building located on 3d Street in Springfield, stepped into a hole thereby causing him to fall to the ground. That following said accident, the claimant immediately notified his superior and engaged Dr. I. B. English, a physician and surgeon with offices in Springfield, who treated the claimant from April 12 to April 15, 1944 for a hernia and recommended that claimant purchase and wear a truss. Claimant paid Dr. English, for medical attention, the sum of \$6.00 and expended the sum of \$12.50 for a truss.

The claimant testified that immediately after he slipped, as aforesaid, he suffered pains in the region of his stomach; that prior to said accident he had never suffered pains in that region; that he had never suffered a rupture prior thereto.

The evidence further discloses that claimant submitted to a physical examination by Dr. Percy C. May, physician and surgeon, Centralia, Illinois, who diagnosed his condition as a bilateral direct inguinal hernia and recommended surgery estimated as follows : surgeon fees, \$150.00; anesthetist's fee, \$10.00; laboratory fee, \$5.00; hospital bill, \$100.00, making a total of \$265.00. He also

estimated that the operation would require claimant to be hospitalized for a period of about three weeks.

Claimant seeks an award for money expended by him for medical services to Dr. English and the amount expended for a truss, and the sum of \$265.00 representing the estimated costs of surgeon fees, etc., in order to repair said bilateral hernia.

On the basis of this record we make the following findings: that the claimant and respondent were on the 11th day of April 1944 operating under the provisions of the Workmen's Compensation Act, that on the date last above mentioned, said claimant sustained accidental injuries which did arise out of and in the course of the employment and that notice of said accident was given said respondent and claim for compensation on account thereof was made on said respondent within the time required under the provisions of said Act. That the earnings of the claimant during the year next preceding the injury are unascertainable for the reason that this record fails to disclose said earnings. That petitioner at the time of his injury was 75 years of age, a widower, and had no children under 16 years of age dependent upon him for support. That the necessary first aid and medical services were not furnished by respondent.

The Court further finds that said claimant sustained a bilateral inguinal hernia as a result of said accidental injury and that the respondent shall provide said claimant with the necessary medical and surgical and hospital services reasonably required to repair said hernia and to cure or relieve from the effects of the injury as provided in Paragraphs (a) and (d-1) of Section 8 of said Act, as amended. The Court further finds that said respondent shall pay to said claimant compensation based upon his annual earnings at the time of said injury during any

period of incapacity from work as a result of such operation as herein above ordered.

An award is hereby entered in favor of Archie Brown, the claimant herein, in the sum of Eighteen Dollars Fifty Cents (\$18.50) representing an expenditure by him of \$6.00 for medical services rendered to him and \$12.50 expended by him for a truss.

The record discloses that Eileen Jones, a court reporter with offices in the First National Bank Building, Springfield, Illinois was employed to report and transcribe the evidence in support of this claim, making a charge therefor in the sum of \$7.80. The Court finds these charges to be fair, reasonable, and customary in the community where the services were rendered.

An award is therefore hereby entered in the sum of Seven Dollars Eighty Cents (\$7.80) for the use of Eileen Jones.

This award is subject to the approval of the Governor as provided in Section 3 of, "An Act concerning the payment of compensation awards to State employees."

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(No. 3943—Claimant awarded \$324.59.)

ARTHUR D. BRUNK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.  
*Opinion filed April 24, 1947.*

L. G. PEFFERLE, for claimant.

GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

**WORKMEN'S COMPENSATION ACT—***when award may be made under for reimbursement of medical and hospital bills. Where an employee sustains accidental injuries, arising out of and in the course of his employment and incurs medical and doctor bills, an award may be made for compensation therefor.*

**DAMRON, J.**

This is a claim filed by the above claimant for benefits under the Workmen's Compensation Act. The record consists of the complaint, departmental report, transcript of evidence, commissioner's report, claimant and respondent's waiver of brief, statement, and argument, and court reporter's bill.

The record discloses that claimant on February 1, 1945 was employed by the Division for Delinquency Prevention in the Department of Public Welfare of the State of Illinois. He was head of the Regional Office at Urbana and had supervision over the work of the various field workers in that office. In addition, he was doing some work for the Delinquency Prevention Division by helping edit a manual regarding the work. This manual had previously been started by Mr. Arley Gillett, a former employee of the Division for Delinquency Prevention, who on the last mentioned date was a coach of the Normal High School and resided at 402 Virginia Avenue, Normal, Illinois.

Arrangements had been made for claimant and Mr. Gillett to do further work on the manual at the latter's home on February 1, 1945. As the claimant approached the place of meeting, he slipped and fell on the icy pavement adjacent thereto. He was immediately taken to the Brokaw Hospital where it was found he had suffered a fracture of the right ankle. He was attended by physicians who reduced the fracture. He was absent from his duties throughout the month of February 1945 and incurred and paid medical bills in the sum of \$244.00 and hospital bills in the sum of \$80.59, for which he has not been reimbursed by the respondent.

The departmental report filed herein shows that claimant was paid full salary during his convalescing pe-

riod amounting to \$350.00 per month 'for unproductive time. .

From the record we make the following findings: that the claimant and respondent were operating under the provisions of the Workmen's Compensation Act and that his accident did arise out of and in the course of his employment by respondent. Inasmuch as claimant received full salary during the time he was incapacitated, his claim for temporary compensation under the Act must be denied.

An award is therefore hereby entered in favor of claimant, Arthur D. Brunk, in the sum of Three Hundred Twenty-Four Dollars Fifty-Nine Cents (**\$324.59**) to reimburse him for hospital bills amounting to **\$80.59**, and doctor bills amounting to **\$244.00**, as provided in Section 8(a) of the Workmen's Compensation Act, as amended.

Eileen Jones, court reporter with offices in the First National Bank Building, Springfield, Illinois, was employed to take and transcribe the evidence in this case and has rendered a bill in the amount of \$14.00. The Court finds that the amount charged is fair, reasonable and customary and said claim is allowed.

An award is therefore hereby entered in the amount of Fourteen (\$14.00) Dollars for the use of Eileen Jones.

This award is subject to the approval of the Governor as provided in Section 3 of, "An Act concerning the payment of compensation awards to State employees."

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(No. 3947 — Claimant awarded \$1,407.00.)

JENNIE NOONAN, Claimant, vs. STATE OF ILLINOIS, Respondent.

*Opinion filed April 24, 1947.*

PERRY D. WELLS and GEORGE D. CARBARY, for claimant.

GEORGE F. BARRETT, Attorney General, and WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*attendant at Elgin State Hospital—when an award for partial loss of use of leg—may be made under.* Where an employee of the State sustains accidental injuries, in the course of her employment, resulting in temporary total disability and permanent partial disability, an award for compensation therefor may be made in accordance with the Act, upon compliance by the employee with the terms thereof.

SAME—*same.* Expense of medical service incurred with the knowledge and consent of employer is compensable.

BERGSTROM, J'.

Claimant, Jennie Noonan, filed her claim on January 10, 1946, alleging that she was injured on February 3, 1945 while employed by respondent at the Elgin State Hospital and remains totally disabled and incapable of performing any work.

The record consists of the Complaint, Departmental Report, Respondent's Waiver of Brief, and Transcript of Evidence.

The jurisdictional requirements of the Workmen's Compensation Act have been met, and we find from the record that claimant was injured by an accident arising out of and in the course of her employment.

Claimant was an attendant at the Elgin State Hospital, and while walking toward the Administration Building to make her daily duty report she slipped on an icy sidewalk, fell and fractured her hip. She was immediately hospitalized at the Elgin State Hospital where she remained for a period of ten days, and then was taken by ambulance to St. Luke's Hospital, Chicago, Illinois, where she remained six weeks under the care of Dr. William R. Cubbins. Afterwards she was taken back to the Elgin State Hospital where she received medical and hospital treatment until January 8, 1946. After said date she continued under the care of her own doctors, but the

record does not contain their names or the amount of money which was paid for her subsequent medical treatments.

Claimant was 68 years old at the time of the accident and had no children under 16 years of age. At the time of the hearing before the Commissioner on December 19, 1946 it was still necessary for the claimant to use a crutch. The record is very inconclusive as to the degree and extent of claimant's permanent disability, but Commissioner East who observed the claimant while she testified at the hearing before him recommends an award based on 25% total disability for loss of use of the leg.

Claimant's wages at the time of said accident were at the monthly rate of \$125.00, or an average weekly wage of \$28.85; her compensation rate, therefore, would be \$14.42 per week to which must be added 17½%, the accident having occurred after July 1, 1943, or a compensation rate of \$16.94 weekly. Claimant was hospitalized until January 8, 1946, a period of 48 weeks from the date of her injury. After her discharge from the hospital she remained at home, and was unable to work and had not been able to work up to the time of the hearing held on December 19, 1946. She would, therefore, be entitled to the maximum of 64 weeks, where an award is given for specific injury, for total temporary incapacity, or the sum of \$1,084.16, from which must be deducted the sum of \$716.31 which was paid claimant for unproductive time, leaving a balance due her of \$367.85 for total temporary incapacity. From the record, we must conclude that she incurred permanent disability to the extent of 25% loss of the use of her leg, and is, therefore, entitled to compensation for 47½ weeks at the rate of \$16.94 per week, or a total of \$804.65.

The record also shows that claimant paid Dr. Wm. R. Cubbins the sum of \$200.00 for medical service, and

also expended the sum of \$34.50 for ambulance service to and from St. Luke's Hospital, which expense was incurred with the knowledge and consent of the respondent, and claimant is entitled to reimbursement for these expenditures in the total amount of \$234.50.

Lura Kingsley was employed to take and transcribe the evidence at the hearing before Commissioner East, and a charge of \$10.00 was incurred for this service, which is reasonable and customary.

An award is therefore entered in favor of claimant, Jennie Noonan, in the sum of One Thousand Four Hundred Seven Dollars (\$1,407.00), all of which has accrued and is payable forthwith.

An award is also entered in favor of Lura Kingsley in the sum of Ten Dollars (\$10.00).

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

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(No. 3958—Claimant {awarded \$2,375.25.})

**SARAH JESSUP**, Claimant, *vs.* **STATE OF ILLINOIS**, Respondent.

*Opinion filed April 24, 1947.*

**JOHN M. KARNS**, **JAMES F. WHEATLEY**, for claimant.

**GEORGE F. BARRETT**, Attorney General, **C. ARTHUR NEBEL**, Assistant Attorney General, for respondent.

**COURT OF CLAIMS LAW**—*damages—where State liable for damages sounding in tort.* Where it appears that claimant sustained serious injuries as a result of a fall into an excavation adjacent to a parcel of land owned and controlled by the State, but unguarded by flares or rails of any kind, the negligence of the State is the proximate cause of said injuries and an award for damages therefor is justified.

**DAMRON, J.**

About midnight on the 11th day of November 1945, the claimant, Sarah Jessup, while walking on the side-

walk along St. Clair Avenue, East Xt. Louis, Illinois, on the south side thereof at a point approximately 50 feet west of First Avenue, fell into an excavation adjacent to a lot or parcel of land owned and controlled by respondent.

The lot is described as 48 feet in width and having a frontage on the south side of Xt. Clair Avenue 52 feet westerly from First Avenue.

The State of Illiiois acquired title to this parcel of land by filing a petition of eminent domain in the County Court of St. Clair County at Belleville; a jury trial was had on June 14 and 15, 1945. The jury rendered its verdict on June 15, 1945 and the decree was entered on July 6, 1945 and an amended decree was entered in said Court on August 23, 1945.

Prior to the filing of said petition of eminent domain by the Department of Public Works and Buildings, said lot was owned by Eva Cohen, Isaac Cohen, et al, and prior to the time of the filing of said petition by respondent, had started the erection of a building on said lot. In the course of the construction approximately two feet of sidewalk had been excavated adjacent to said lot leaving an opening approximately two feet wide and about forty feet long running east and west. From the evidence it appears the opening was about 3 feet deep.

The evidence discloses that at the time of the accident, no flares were lit, nor guard rails erected of any kind to warn pedestrians who were travelling upon said sidewalk, except a small railing on the ends of the excavation, the north edge was unprotected and the sidewalk at that point was dark. As a result of the negligence of respondent in leaving said excavation unguarded, the claimant fell into it receiving severe injuries. Claimant was lifted from the excavation and placed in an automo-

bile and taken to her home in St. Louis. On the following day she was removed to the Deaconess Hospital in said City on orders of her physician where a series of x-rays were made which disclosed that she had suffered a compressed fracture of the 8th thoracic vertebra, contusions, abrasions, and other injuries to her body. She remained in the hospital several days receiving treatment, was later removed to her home where she remained in bed under the care of her physician. On the 18th day of October 1946, the testimony in support of this claim was taken and at that time the testimony shows that she had, from the date of the accident to the taking of said testimony, suffered severe pain and on orders of her physician was wearing a brace on her back. The medical testimony shows that the compressed fracture of the 8th thoracic vertebra was a permanent condition and it was the opinion of the physician who treated her that she would likely have to wear a brace throughout her lifetime.

At the time of the accident, claimant was 40 years of age, unmarried, and was employed at the St. Louis Post Dispatch Newspaper, St. Louis, Missouri, at a salary of \$48.50 per week and that as a result of her injuries, lost considerable time at her employment. She has now resumed her employment. In an effort to become relieved and cured from her injuries she expended or became liable to pay \$375.25 on account of physicians, hospital and incidentals incurred, in connection with her said injuries. Under Section 7 Paragraph (C) of the Court of Claims Law, claimant is entitled to an award for damages.

An award is therefore hereby entered in favor of claimant, Sarah Jessup, in the sum of Two Thousand Three Hundred Seventy-Five (\$2,375.25) Twenty-Five Cents.

(No. 3959-3960 Consolidated—Claimants awarded \$2,500.00.)

JOSEPH POMPROWITZ, DOING BUSINESS AS L. C. L. TRANSIT COMPANY, AND INSURANCE COMPANY OF NORTH AMERICA, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

AND

HARTFORD FIRE INSURANCE COMPANY, A CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed April 24, 1947.*

MYERS and SNERLEY, for claimant.

GEORGE F. BARRETT, Attorney General and WM. L. MORGAN, Assistant Attorney General, for respondent.

*COURT OF CLAIMS ACT—when award for damages in a case sounding in tort may be made under Section 8, (c) of Act.* Where it appears that a motor vehicle and trailer traveling on highway, sustained damages and damaged its cargo, as a result of driving into a dangerous excavation on the road, which remained unguarded, and unbarricaded, and unprotected, and without warning lights, at night, and there is no showing of contributory negligence on the part of the operators of said vehicles, an award may be made for damages not to exceed the sum of \$2,500.00 under Section 8, (c) of the Court of Claims Act.

*EVIDENCE—when sufficient to show negligence of the State proximate cause of (accident and resulting damages.* Where witnesses for claimant testify that dangerous excavation in road was unprotected by suitable barricades and that where there were no flares lit or burning at night to warn motorists of said hazard—and their testimony is not contradicted, there is a sufficient showing to prove negligence on the part of the State in its duty to properly warn the traveling public of the existence of a dangerous excavation.

ECKERT, C. J.

On August 21, 1946, in the afternoon, employees of the respondent excavated a hole in the paved highway known as Skokie Road, (U.S. Highway 41), at a point about 600 feet south of the Lake-Cook County line. The hole was made in the outside, southbound lane of the four lane highway, running north and south, at the extreme westerly side of the pavement. The hole was ten feet by ten feet, and approximately fifteen inches deep.

Early the following morning, between 4:30 and 5:30, while it was still dark, an employee of Joseph Pomprowitz, driving a tractor and trailer from Waukegan to Chicago, driving south on U. S. Highway 41, struck this hole. The right front wheel of the truck went into the hole; the tractor and trailer followed through, blowing out five tires on the right side, and overturned.

The claimants allege that the respondent failed in its obligation to maintain the highway in a reasonably proper and safe condition, and while making repairs, failed to exercise reasonable care and caution in keeping the highway safe for travel. Claimants allege that the respondent was negligent in failing to fill in the excavation, or in failing to maintain adequate and proper warning to the public of the existence of the excavation, or in failing to keep and maintain proper barricades around the excavation, or in failing to keep and maintain lighted flares around the excavation at night and during the early morning hours.

The claimant, Joseph Pomprowitz, claims damages to his tractor in the sum of \$1,463.35, claims damages to his trailer in the amount of \$938.34, and claims damages in the amount of \$350.00 for the loss of use of the tractor and trailer while being repaired. At the time of the accident, he was insured by the claimant, Insurance Company of North America, against loss or damage to the tractor by collision in excess of \$250.00 deductible, and against loss or damage to the trailer by collision in excess of \$250.00 deductible. The claimant, Insurance Company of North America, on September 10, 1945 paid to the claimant, Joseph Pomprowitz, d/b/a L.C.L. Transit Company, the amount of its liability on account of such insurance in the amount of \$1,901.69, and thereupon became subrogated to that extent to the rights and cause of action of

the claimant, Joseph Pomprowitz, d/b/a L.C.L. Transit Company, against the respondent.

The claimant, Hartford Fire Insurance Company, alleges that at the time of the accident the refrigerator trailer was transporting goods and merchandise of the Kraft Foods Company, consisting of 11,880 pounds of Philadelphia Cream Cheese Curd of the value of \$2,-959.12; that as a result of the negligence of the respondent, 3,093 pounds of this cheese curd, of the value of \$770.16 was totally destroyed; that, the Kraft Foods Company was forced to expend \$121.32 in salvaging and reprocessing the balance of the cheese curd; and that the Kraft Foods Company suffered a total loss of \$891.48 which the Hartford Fire Insurance Company has paid under **an** insurance **policy** issued by it to the Kraft Foods Company, insuring the **company** against loss or damage to the cheese curd while being transported. The Hartford Fire Insurance Company is therefore subrogated to the rights and cause of action of the Kraft Foods Company against the respondent.

Claimant, Joseph Pomprowitz, d/b/a L.C.L. Transit Company, seeks an award for damages in the total sum of \$850.00 as follows :

- \$250.00 damage to tractor for which he was not insured;
- \$250.00 damage to trailer for which he was not insured;
- \$350.00 damage for loss of use of tractor and trailer while being repaired.

Claimant, Insurance Company of North America, seeks an award for damages in the amount of \$1,901.69, being the total loss and damage sustained to the tractor and trailer for which the claimant was liable under its policy of insurance.

Claimant, Hartford Fire Insurance Company seeks an award for damages in the amount of \$891.48, being

the total loss and damage sustained to the cheese cargo for which claimant was liable under its policy of insurance.

Keith Walker Flynn, a witness for claimants, stated that on August 21 and 22, 1945, he was employed by Joseph Pamprowitz, d/b/a L.C.L. Transit Company, as a transport driver; that on the early morning of August 22, he was driving a tractor and trailer, belonging to Pomprowitz, south on Skokie Highway, U. S. Route No. 41, toward Chicago; that he was hauling a cargo of cream cheese curd from Beaver Dam, Wisconsin, the shipment being consigned by the Kraft Foods Company from Beaver Dam, Wisconsin, to the Kraft Foods Company in Chicago. The witness further testified that about 600 feet south of the Cook County line, while driving in the extreme right or extreme west lane of the four lane highway, while it was still dark, between 4:30 and 5:30 in the morning, he noticed a black spot in the highway about thirty-five or forty feet ahead of him. He testified that his lights were burning and his brakes were in good order; that when he was within five to ten feet of the black spot, he saw that it was a hole; that he swerved to the left, but that he was unable to cut the truck short enough to miss it, and caught the right front wheel in the hole. The tractor and trailer followed through, blowing out five tires on the right side, and overturned. The witness stated that there was no barricade in front of the hole, and that there were no flares or lights of any kind around the hole.

The witness further testified that immediately after the accident he went back to the hole and found two flare pots on the grass at the side of the road, unlighted, filled with oil, and cold. He also found a piece of a barricade on the grass, five or six feet from the hole, at the side of the highway.

Edward W. Stapp, a witness testifying for claimant, stated that he was a soldier in the U. S. Army on August 22, 1945; that in his spare time he drove a cab for the Yellow Cab Company of Glencoe, Illinois that on the early morning of August 22, 1945, between four and five o'clock, while he was standing outside of the tavern, Skokie Gardens, on U. S. Route 41, he saw a truck pass the tavern, heard a noise, and saw the truck overturned. He testified that about one-half hour before he had driven south on U. S. Route 41 in his cab, and barely missed hitting the hole in the pavement; that at that time there was no barricade, nor light near this hole; that there were some barricades off the road to the right, but there were no barricades in front of the hole, and no flare pots.

Frank Glazic, a witness for the claimant, stated that on August 22, 1945 he was employed as driver for the Chair City Motor Express, driving one of its trucks from Wisconsin to Chicago; that about two o'clock in the morning of August 22nd he was driving on the outside lane of U. S. Highway 41 going south; that he saw the hole in the pavement when he was about ten or fifteen feet from it; that before he saw the hole he noticed a piece of broken barricade lying on the highway; that to avoid the barricade, he swung to the inner lane, and barely missed the hole. He testified that if it had not been for the piece of broken barricade he would not have swung to the inner lane; and that there were no flare pots and no barricade on the highway in front of the hole.

John L. Thomas, a witness testifying on behalf of the respondent, stated that he is a field engineer employed by the Division of Highways; that on August 21st, 1945, after the hole in U. S. Highway 41 had been cut, about 4:30 o'clock in the afternoon, the helper on the highway patrol filled all the flare pots and put up the barricades,

ready for inspection, which took place between 5:00 and 5:30 in the evening. He testified that before he left the highway, the flare pots were lighted, and the barricades were in place, one barricade and three lights; that the flare pots burned kerosene; that there was no wind or rain that night; and that the hole which the truck hit was the farthest north of a series of excavations, the next excavation being between 500 and 600 feet south of the excavation in question. He testified that the flare pots burn a minimum of thirty hours.

Herbert Richardson, testifying on behalf of respondent, stated that at the time of the accident he was employed by the Division of Highways as a helper on a truck; that on August 21, 1945, about 4:30 in the afternoon, he filled three flare pots with kerosene, lighted them, and placed them, with a barricade, before the hole; that after lighting the pots, he went away and did not return, but that the flare pots were all lighted the next morning except the flares at the place of the accident. He also testified that the flare pots hold about a gallon of kerosene.

There can be no question that the respondent in the construction, maintenance, and repair of its highways has a duty to exercise reasonable care and caution to prevent injury to or destruction of life and property. Where the respondent, in the course of road repairs, leaves a deep excavation in the highway it is incumbent upon it to take reasonable measures to guard against injury to the public. Minimum safe-guards would be adequate barriers and suitable lights, warning of the hazardous and dangerous situation.

Here there was neither barricade nor light at the hole in the pavement when the Pomproville truck approached. There had been neither barrier nor light for nearly three hours before this accident. Although the

respondent's employee testified that he filled the flares, and lighted them, the evidence is undisputed that they were full of kerosene when examined after the accident, and were lying in the grass, cold, some distance off the highway. If the respondent's employee filled the flares, and if they were still full of kerosene at the time of the accident, they, either had not 'been lighted at all, or had been lighted and almost immediately went out. It is exceedingly improbable that another motor vehicle broke the barrier and put out the flares prior to darkness. At that time of year it is not dark until 8:30 in the evening. If flares had been lighted, they would have burned at least four hours before darkness. Since they hold a gallon of oil, and burn thirty hours, they would have consumed almost a pint of kerosene.

It also seems quite improbable, if the barricade and flares had been properly placed on the pavement in front of the hole, that both of the flares would have been knocked off the pavement by another motor vehicle and set up nicely in the grass a considerable distance from the edge of the pavement. At least one of them, after such an accident, would have been found on, the pavement, or in the large hole.

The highway in question is one of the heaviest travelled highways in the State of Illinois, both day and night, a fact well known to the respondent. After having made an extremely hazardous and dangerous excavation, the respondent put up a single barrier. It may or may not have lighted flares. No further attention was given to either barrier or flares after 5:30 in the afternoon. Neither was in place at 2 o'clock the following morning.

The Court is of the opinion that the respondent was negligent in the performance of its duty to the traveling public by failing to maintain, during the night of August

21st and the morning of August 22, 1945, proper warning of the existence of this dangerous excavation. Respondent cannot meet its obligation to motorists traveling on a busy, four lane highway, in these days of almost continuous commercial and personal motor travel, by putting up a single barrier, lighting two or three flares in late afternoon, and returning the following morning with a hope and a prayer that all is well.

The record clearly shows that the respondent failed to perform its duty as imposed by law; and that claimants are without contributory negligence. All the allegations as to damages, and as to the insurance of the tractor, the trailer, and the cargo, are supported by competent evidence, and are not denied by the respondent.

Section 8, C, of the Court of Claims Act, however provides that an award for damages in a case sounding in tort shall not exceed the sum of \$2,500.00 to or for the benefit of any claimant. An award to the Insurance Company of North America is for the benefit of Joseph Pomprowitz, d/b/a L.C.L. Transit Company; therefore awards to the Insurance Company of North America and to Joseph Pomprowitz, d/b/a, L.C.L. Transit Company may not exceed \$2,500.00.

Awards are therefore entered as follows:

Joseph Pomprowitz, d/b/a L.C.L. Transit Company,  
Five Hundred Ninety-Eight and 31/100 Dollars (\$598.31).

Insurance Company of North America, One Thousand Nine Hundred and One and 69/100 Dollars (\$1,901.69).

Hartford Fire Insurance Company, Eight Hundred Ninety-One and 48/100 Dollars (\$891.48).

(No. 3961—Claimant awarded \$1,531.40.)

ELMER EMORY, Claimant, vs. STATE OF ILLINOIS, Respondent.

*Opinion filed April 24, 1947.*

ROBERT H. DAVIS, for claimant.

‘GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN’S COMPENSATION ACT—*employee of the Department of Public Works and Buildings within provisions of—when an award for a permanent 50% loss of use of leg is justified.* Where an employee of the State sustains accidental injuries, arising out of and in the course of his employment, resulting in a 50% permanent loss of the use of his left leg—an award for compensation therefor may be made, in accordance with the provisions of the Act, upon compliance by the employee with the requirements thereof.

ECKERT, C. J.

On June 22, 1945 the claimant, Elmer Emory, an employee of the Department of Public Works and Buildings, Division of Highways, while mowing weeds and cleaning the back slopes of Illinois Route No. 1, west of Ridgway, in Gallatin County, Illinois, was struck by a car travelling south on the highway. He was thrown to the pavement and suffered a fracture of the left tibia.

Immediately following the accident, claimant was taken to Lightner Hospital, at Harrisburg, Illinois, and placed under the care of Dr. Joseph Lightner, who reported a diagonal fracture of the left tibia about the junction of the middle and upper third. X-rays were taken, the fracture was reduced, and put in a plaster cast. Claimant remained under the care of Dr. Lightner until January 19, 1946, when the doctor reported to the respondent that he had discharged claimant as of that date, and that claimant would be able to work on February 15, 1946. Dr. Lightner also reported that there would be some per-

manent disability because of claimant's fear to use his left leg and because "his age will probably hold him back some."

At the time of the accident claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this state, and notice of the accident and claim for compensation were made within the time provided by the act. The accident arose out of and in the course of decedent's employment.

During the year immediately preceding the accident claimant's earnings aggregated \$1,426.75. He had no children under sixteen years of age dependent upon him for support. His compensation rate is therefore \$13.72 per week. The injury having occurred subsequent to July 1, 1943, this must be increased  $17\frac{1}{2}\%$ , making a compensation rate of \$16.12. Respondent has paid to claimant, on account of temporary total disability, \$16.12 per week from June 23, 1945 to February 14, 1946, or the total sum of \$545.77, and \$149.00 on account of medical and hospital services.

Inasmuch as claimant's temporary total disability terminated on February 14, 1946, he is not entitled to additional payments on account of temporary total disability. No claim is made for further medical or hospital services, so that the only question remaining is the nature and extent of claimant's permanent disability.

At the hearing before Commissioner Jenkins, claimant testified that his left leg was not strong; that he could not stand on it very long; that it swells each day; that he can not walk without the use of a cane; that he lives a quarter of a mile from town, and can walk that distance only with his cane; that it takes him 15 or 20 minutes for the walk; and that when he arrives in town he is so tired that he is required to rest for 30 or 40 min-

utes before he ~~can~~ walk again. Claimant also testified that he has not worked since the injury.

Dr. Joe Bryant, testifying on behalf of claimant, stated that a recent examination of claimant's left leg disclosed swelling, pain, and limitation of motion. Dr. Bryant testified that the condition was permanent, and that the only work which claimant could do would be something sitting down. The doctor stated that he found an overriding of the fracture with a noticeable calcium deposit, and that there was a shortening of about one inch.

From the departmental report, which forms a part of the record in the case, from the testimony, and from the opinion of the commissioner who observed the claimant, the court is ~~of~~ the opinion that claimant has suffered a 50% permanent loss of use of his left leg. He is therefore entitled to an award for 50% of his average weekly wage for 95 weeks, increased  $17\frac{1}{2}\%$ .

Doris Leavell of Shawneetown, Illinois, was employed to take and transcribe the evidence at the hearing before Commissioner Jenkins. Charges in the amount of \$20.00 were incurred for these services, which charges are fair, reasonable, and customary.

An award is therefore entered in favor of 'Doris Leavell in the amount of \$20.00, and an award is entered in favor of Elmer Emory, in the amount of \$1,531.40, payable as follows :

\$999.44, which has accrued, is payable, forthwith;

**\$531.96**, is payable in weekly installments of **\$16.12** per week, beginning April 24, 1947, for a period of 33 weeks.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3963—Claimant awarded \$82.68.)

**THE LIQUID CARBONIC CORPORATION, Claimant, vs. STATE OF ILLINOIS, Respondent.**

*Opinion filed April 24, 1947.*

**CLAIMANT, pro se.**

**GEORGE F. BARRETT, Attorney General, for respondent.**

*SUPPLIES—lapse of appropriation out of which could be Paid—before presentment of bill—sufficient unexpended balance in appropriation—when award for value may be made.* Where it clearly appears that claimant furnished supplies or rendered services to the State, and for which an appropriation existed out of which payment could be made therefor, an award may be made for reimbursement or payment for said supplies or services where such appropriation lapsed before payment was made for same, and sufficient unexpended balance therefor remains therein, on claim filed in reasonable time.

**ECKERT, C. J.**

Respondent, through its Department of Public Health, made duly authorized purchases of dry ice from the claimant during the months of May and June 1945, totalling Eighty-two and 68/100 Dollars (\$82.68). The appropriations for the payment of these items lapsed before the invoices could be cleared for payment by the department. The invoices, however, had been submitted within a reasonable time, and non-payment is without fault on the part of the claimant'. Sufficient funds remained unexpended in the appropriation to pay for the same.

An award is therefore entered in favor of the claimant in the amount of Eighty-two and 68/100 Dollars (\$82.68).

(No. 3973—Claimant awarded \$343.63.)

ANNA JENKINS, Claimant, vs. STATE OF ILLINOIS, Respondent.

*Opinion filed April 24, 1947.*

MEYER and MEYER, for claimant.

GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*attendant at Alton State Hospital within provisions of—when claim for total temporary disability may be allowed under.* Where an employee of the State sustains accidental injuries arising out of and in the course of his employment, resulting in temporary total disability—an award for compensation therefor may be made in accordance with the provisions of the Workmen's Compensation Act, upon compliance with the requirements of the act and proper proof of claim for same.

SAME—*claim for partial permanent disability—proof necessary to sustain.* To obtain an award for partial permanent disability under Paragraph "D" of Section 8 of the Workmen's Compensation Act, there must be proof of a difference between the average amount which claimant earned before the accident, and the average amount which she is earning or is able to earn in some suitable employment after the accident.

BERGSTROM, J.

Claimant, Anna Jenkins, filed her claim on July 15, 1946 alleging that while in the performance of her duties as ward attendant at the Alton State Hospital she was attacked by an inmate on April 15, 1945 and, as a result thereof, she suffered serious and permanent injuries.

At the time of the accident, claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course of claimant's employment.

On April 15, 1945, while claimant was attempting to direct a new patient to her chair, the patient became

violent and severely and repeatedly struck claimant upon her face, throat, chest and body. The patient was a powerful woman, weighing about 250 pounds. After completing her day's work, claimant testified she felt weak and ill, and unsuccessfully tried to locate one of the hospital doctors. She then went home and placed herself in the care of Dr. Baker and stayed in bed for three weeks. After that, for a period of almost a year, it was necessary for her to stay in bed part of each day. During this time she was also treated by other doctors. Dr. James F. McFadden, who qualified as a specialist in nervous and mental diseases, testified that he examined claimant on August 5, 1946 and again on December 13, 1946; that claimant was suffering from a functional nervous disease known as neurosis; that in his opinion it was caused by the trauma she sustained at the time of the accident; that his prognosis as to her eventual cure was not favorable, and that she would not be able to do any physical work. On cross examination he admitted that claimant's menopause might have been a contributing factor to her present condition. In a lengthy medical report regarding claimant's condition made by Dr. Dan Tucker Miller, which was submitted into evidence by stipulation, he states in his conclusion—

"In addition to the physical impairments above described, this woman gives every evidence of having a very serious neurosis. If it can be reasonably established that she did not suffer from this neurosis prior to the injury, it is my opinion that it has been caused by the accident. If she did have a functional nerve impairment prior to the accident of April 15, 1945 then, of course, the extent of same has been very greatly increased by the accident. Inasmuch as the neurosis has persisted for approximately twenty months, it is also quite well established that this patient will continue to suffer from this type of nerve ailment for months or years to come. Whether or not good treatment will eventually lead to recovery of this functional nerve ailment is uncertain. As to the organic injuries involving the osseous system, these impairments are, of course, permanent."

From the evidence, it would appear that claimant is suffering from a functional nervous disease aggravated by the accident, with the possibility that her menopause was a contributing factor.

The record shows that she was employed by the Bellefontaine Farms as cottage supervisor on June 6, 1946 at a monthly salary of \$100.00. Whatever physical incapacity claimant now has, it apparently is partial, and payment of compensation, if any, would be under Sec. 8, Par. D of the Workmen's Compensation Act. As there is no difference between the average amount which she earned before the accident and the average amount which she is now earning, an award cannot be made under the said Sec. 8, Par. D.

Medical bills were submitted as follows :

Dr. L. L. Baker.....	\$10.00
Dr. James F. McFadden .....	53.00
Dr. George Ives, Clinical Laboratory..	5.00

The record does not disclose that these bills or any other medical charges were authorized by respondent, but to the contrary the Department of Public Welfare in their report say "Since Mrs. Jenkins did not report to a physician following her injury, we had no opportunity to examine her and determine the extent of her injury or recommend treatment or administer treatment following the injury, and cannot give additional evidence as to what injury she may have sustained." Apparently claimant elected to employ her own doctors and this being the case, under paragraph (a) Section 8 of the Workmen's Compensation Act, it necessarily must be at her own expense.

The earnings of persons employed in a similar capacity as claimant earned \$1,200.00 per year. Her average weekly wage would be \$23.08 which would make her compensation rate \$11.54 weekly, to which must be added

17½%, her accident having occurred after July 1943, making her total weekly compensation rate \$13.56. Claimant is entitled to receive compensation for total temporary disability of \$13.56 from April 16, 1945 to June 6, 1946—59 2/7 weeks—or \$803.92, from which must be deducted the sum of \$460.29 paid claimant for unproductive time, leaving a balance due her for total temporary disability of \$343.63.

Floriene Stricker of Alton, Illinois, was employed to take and transcribe the evidence at the hearing before Commissioner Jenkins, and a charge for \$15.60 was incurred for this service, which is reasonable and customary.

An award is therefore allowed to the claimant, Anna Jenkins, in the sum of \$343.63, all of which has accrued and is payable forthwith.

An award is also made to Floriene Stricker for the sum of \$15.60.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

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(No., 3974—Claimant awarded \$4,800.00.)

FLORENCE HOWARD, WIDOW OF CARL B. HOWARD, DECEASED,

Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed April 24, 1947.*

A. WADSWORTH APPLEBY, for claimant.

GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—attendant at Illinois **School** for the Deaf *within provisions of—when award may be made for death of employee under.* Where an attendant at Illinois School **for** the Deaf sus-

tains accidental injuries, arising out of and in the course of his employment, resulting in his death, an award may be made for compensation therefor, in accordance with the provisions of Section 7 (a) of the Workmen's Compensation Act, to those legally entitled thereto upon compliance with the requirements of the act and proper proof of claim for same.

ECKERT, C. J.

On May 26, 1946, Carl B. Howard, an employee of the respondent in the Department of Public Welfare, while passing through the kitchen of the Illinois School for the Deaf at Jacksonville, Illinois, to inspect and service refrigeration equipment, slipped and fell upon the floor. The fall resulted in a fracture of his left femur.

Mr. Howard was immediately hospitalized at Passavant Memorial Hospital, Jacksonville, under the care of Dr. F. A. Norris, Dr. Reginald Norris, and Dr. George L. Drennan. Mr. Howard died on June 10, 1946, as a result of a pulmonary embolus.

At the time of the accident, which resulted in the death of Carl B. Howard, the employer and employee were operating under the provisions of the Workmen's Compensation Act of this state, and notice of the accident and claim for compensation were made within the time provided by the act. The accident arose out of and in the course of decedent's employment.

Dr. F. A. Norris, a witness testifying for claimant, stated that immediately following the accident X-rays were taken which showed an intra-capsular fracture of the left hip. The hip was then pinned, and three days later four additional pins were inserted. One of these subsequently slipped out of place and Dr. Norris felt it should be removed to prevent its interfering with the desired result. Two days later the offending pin was taken out and replaced; on June 10th the decedent had "a typical pulmonary embolus," which was massive and fatal. Dr. Nor-

ris testified that the injury was the direct cause of the death, an embolus being one of the great hazards of surgery.

Mr. Howard's earnings during the year immediately preceding his death were \$2,670.00; claimant therefore is entitled to an award in the sum of \$4,000.00. Since the death occurred subsequent to July 1, 1945 this must be increased 20%, making a total of \$4,800.00. The compensation rate is the maximum of \$15.00 per week, increased 20%, or \$18.00.

An award is therefore entered in favor of the claimant, Florence Howard, in the amount of \$4,800.00 to be paid to her as follows:

\$ 828.00, accrued, is payable forthwith;  
\$3,972.00, payable in weekly installments of \$18.00 per week, beginning on the 29th day of April, 1947, for a period of 220 weeks, with an additional final payment of \$12.00.

All future payments being subject to the terms and conditions of the Workmen's Compensation Act of Illinois, jurisdiction of this cause is specifically reserved for the entry of such further orders as may from time to time be necessary.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

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(No. 3977—Claimant awarded \$900.38.)

BOARD OF EDUCATION OF SCHOOL DISTRICT No. 129 WINNEBAGO COUNTY, ILLINOIS, Claimant, vs. STATE OF ILLINOIS, Respondent.

*Opinion, filed April 24, 1947.*

THOMAS and DAVIS, for claimant.

GEORGE F. BARRETT, Attorney General and C.

ARTHUR NEBEL, Assistant Attorney General, for respondent.

*BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 129, WINNEBAGO COUNTY—when claim for tuition due for pupils who are children of parents or guardians employed in military encampments owned or used by State or Federal Government—may be allowed.* Under authority of paragraph A-1, Section 234¾, Chapter 122, Illinois Revised Statutes 1943, the State contributes to school districts which have pupils who are children of parents or guardians employed in military encampments owned or used by the State or Federal or a United States Veterans Hospital, etc.

*SAME—appropriations—lapsed or exhausted—when award justified.* Where, by reason of the provisions of Chapter 127, paragraphs 161 and 163, Ill. Rev. Statutes 1945, the school appropriations for the year in question would not have been available and have either been used, or have lapsed and that by reason of the foregoing, claimant was deprived of adequate remedy by way of proceedings in mandamus, and the superintendent of Public Instruction admits the amount claimed, an award for same is justified.

**BERGSTROM, J.**

Claimant, Board of Education of School District No. 129, Winnebago County, Illinois, filed its claim on August 26, 1946.

Claimant seeks to recover from respondent the sum of \$900.38 under the authority of paragraph A-1, Section 234¾, Chapter 122, Illinois Revised Statutes 1943, which provides for State contributions to School Districts which have pupils who are children of parents or guardians employed in military encampments owned or used by the State or Federal Government or a United States Veterans Hospital, etc.

By stipulation, the record in this case consists of the complaint together with the exhibits attached thereto, and the report of the Office of the Superintendent of Public Instruction of the State of Illinois dated January 16, 1947 which has been filed in this case, and the stipulation.

The complaint alleges, and contains as a part thereof, photostatic copy of a petition filed by claimant for a

Writ of Mandamus in the Circuit Court of Winnebago County, Illinois, case No. 52263, wherein in Count 1 petitioner prayed for an order on the defendant, Vernon L. Nickell, as Superintendent of Public Instruction of the State of Illinois, commanding him in the due course of administration of the affairs of his office, to prepare and certify to the Auditor of Public Accounts of the State of Illinois, the tuition claims of said petitioner for the school year ending June 30, 1944, or to amend the claim for tuition of School District No. 129, Winnebago County, Illinois, as heretofore certified to said Auditor of Public Accounts of the State of Illinois, in accordance with the terms and provisions of the Statutes of the State of Illinois, said claim to be certified in the sum of \$1,470.00. It also contained a prayer that the Court order the defendant, Arthur C. Lueder, as Auditor of Public Accounts of the State of Illinois, commanding him in the due course of administration of the affairs of his office, to permit the superintendent of Public Instruction of the State of Illinois to prepare and certify to him the tuition claim of School District No. 129, Winnebago County, Illinois, for the school year ending June 30, 1944, or to amend the tuition claim of said School District heretofore certified to him, all in accordance with the terms and provisions of the Statutes of the State of Illinois, said claim to be certified in the sum of \$1,470.00; and, wherein in Count II of the same petition, the same prayers were set forth except that the amount was \$900.38 and for the school year ending June 30, 1943. The petition was later amended and Count II stricken from the petition. Subsequently, on April 16, 1945, an order was entered by the Court in said proceedings substantially allowing the prayer of the petition as contained in Count I.

The complaint filed herein also alleges that the funds

for the sum of \$900.38 for tuition due the said School District for the school year ending June 1943 could not be reached by court order in the action for a Writ of Mandamus unless and until there had been made a recomputation of the claims of all school districts within the State of Illinois, which districts exceed 13,000 in number; that such recomputation would have caused a delay in the payment of tuition claims to school districts and would have worked irreparable injury to all such districts, and similarly, would have imposed undue hardship upon the Auditor of Public Accounts of the State of Illinois in the performance by him of the regular functions of his office. That since June 1943 the school appropriations for the State of Illinois, for that year, have either been used, or have lapsed, and funds which would have been available for disbursement under order of Court, were not then available by reason of the provisions of Ch. 127, par. 161, 163, Ill. Rev. Stats., 1945, which provides :

"161. For what period appropriation available. When an appropriation shall be made without restriction as to the time of its use, it shall be available for expenditure for the purposes and to the amount therein stated, from the date that the act becomes effective to and including the thirtieth day of June of the year in which the next General Assembly shall convene;"

"163. Warrants may issue until what time. In payment of contracts made and liabilities incurred within the times specified in this Act, warrants may issue at any time until the expiration of the first fiscal quarter after the adjournment of the General Assembly held next after that at which the appropriation was made;"

and that by reason of the foregoing, claimant was deprived of adequate remedy by way of proceedings in mandamus, and therefore brought this, its claim, before the Court of Claims of the State of Illinois.

The record contains a report from the Superintendent of Public Instruction of the State of Illinois con-

curing to the facts as alleged, and further states "The amount asked by the District has not been paid and it appears that the plaintiff is entitled to the sum of money which has been asked for."

Through the mandamus proceedings filed in the Circuit Court of Winnebago County, Illinois, claimant obtained relief for the school year ending June **30, 1944**. The facts are the same with respect to the school year ending June **30, 1943**, and claimant dismissed its mandamus proceedings affecting this school year for the reason that it would have required a recomputation of the claims of over 13,000 school districts in the State of Illinois. This would have caused unreasonable delay in the payment of such tuition claims, and would have required considerable administrative detail work to make such a recomputation. From the record, claimant is entitled to an award for the sum of money claimed.

An award is therefore entered in favor of the Board of Education of School District, No. **129**, Winnebago County, Illinois, in the sum of **\$900.38**.

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(No. 3984—Claimant awarded \$5,340.00.)

**RUBY BAKER, WIDOW OF FREDERICK C. BAKER, DECEASED,**

Claimant, vs. **STATE OF ILLINOIS**, Respondent.

*' Opinion filed April 24, 1947.*

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**PAUL F. JONES**, for claimant.

**GEORGE F. BARRETT**, Attorney General, and **C. ARTHUR NEBEL**, Assistant Attorney General for respondent.

**WORKMEN'S COMPENSATION ACT**—*employee of Department of Insurance—when death results in the course of employment—an award may be made for compensation therefor under Section 7 (a) of Act. The identical questions presented here have been before this Court and*

decided in *Miller vs. State*, and *Taylor vs. State*, ante, this volume, and what was said in those cases is applicable here, and permits of no distinction between an employee of the Department of Insurance, and an employee of the Department of Revenue or the Department of Public Health.

### ECKERT, C. J.

The decedent, Frederick C. Baker, was employed by the respondent in the Department of Insurance, Division of Licenses, at the time of his death, and had been so employed since May 15, 1941. His employment required that he investigate violations of insurance laws wherever such violations might occur. Much of his work was, of necessity, done in Chicago.

During the latter part of May, and the first week of June, 1946, the decedent was assigned to work in Chicago, and he was authorized by his department to stay at the LaSalle Hotel. Early in the morning of June 5th, a disastrous fire occurred at the hotel in which Mr. Baker lost his life. He left the claimant, Ruby Baker, his widow, and Ruth Ann Baker, his fifteen year old daughter, surviving.

The Director of Insurance had immediate notice of Mr. Baker's death, and demand for compensation was made by the claimant within six months thereafter.

There is no dispute as to the facts. The respondent, however, raises two questions of law which have previously been presented and determined by this court in the case of *Lilla M. Miller vs. State of Illinois*, No. 3991, 16 C.C.R.; *Margaret L. Taylor vs. State of Illinois*, No. 3996, 16 C.C.R. The decisions in those cases are controlling here, and permit no distinction between an employee of the Department of Insurance and an employee of the Department of Revenue or the Department of Public Health.

The court, therefore, finds, that the death of Frederick C. Baker arose out of and in the course of his employment, and that as an employee of the Department of Insurance he was entitled to the benefits of the Workmen's Compensation Act of this State.

Mr. Baker's earnings during the year immediately preceding his death were in excess of \$4,000.00, so that claimant is entitled to an award in the sum of \$4,450.00. Since the death occurred subsequent to July 1, 1945, this must be increased 20%, making a total award of \$5,340.00. The weekly compensation rate is the maximum of \$15.00, increased 20% or \$18.00.

Award is therefore entered in favor of the claimant, Ruby Baker, in the amount of \$5,340.00 to be paid to her as follows:

\$ 828.00, accrued, is payable forthwith;

\$4,512.00, is payable in weekly installments of \$18.00, beginning on the 24th day of **April**, 1947, for a period of 250 weeks, with an additional **final** payment of \$12.00.

All future payments being subject to the terms and conditions of the Workmen's Compensation Act of Illinois, jurisdiction of this cause is specifically reserved for the entry of such further orders as may from time to time be necessary.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

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(No. 3987 — Claimant awarded \$1,620.00.)

ALBERT E. COOLIDGE, Claimant, vs. STATE OF ILLINOIS,  
Respondent.

*Opinion filed April 24, 1947.*

L. RICHARD WHITNEY, for claimant.

GEORGE F. BARRETT, Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*employee of Division of Highways within provisions of — hen award for compensation for partial loss of use of arm may be made under.* Where it appears that an employee of the State sustains accidental injuries, arising out of and in the course of his employment, resulting in 40% functional loss of use of his right arm, an award may be made for compensation therefor, under the provisions of the Act upon compliance by the employee with the terms thereof.

DAMRON, J.

This is a claim under the Workmen% Compensation Act for an injury to the above named claimant which, occurred on the 25th day of September 1945.

The record consists of the complaint, report of the Division of Highways, respondent's waiver of brief, statement, and argument, report of the attending physician, stipulation that departmental report shall constitute the record, claimant's waiver of brief, statement, and argument, and the report of Commissioner East.

The departmental report shows that the claimant resides at Elmwood, Peoria County, Illinois, is married, 64 years of age and had no children under 16 years of age dependent upon him for support at the time this cause of action arose. He was first employed by the Division of Highways as a highway maintenance patrolman March 22, 1941 at a salary of \$125.00 per month. Although his classification remained unchanged, his salary rate was increased on the following dates to the amounts indicated thereafter : December 1, 1941, \$135.00; July 1, 1943, \$150.00; July 1, 1944, \$160.00. July 1, 1945 his classification was changed to that of highway section man and his salary was increased to \$184.00 per month. He continued in the same classification and at the same salary rate until the date of his injury, making his salary

for the year next preceding the date of his injury amount therefore to the sum of \$1,995.47.

On September 21, 1945, claimant was standing on a pile of posts, loading a highway truck when the post he was standing on rolled from under his feet causing him to fall to the ground striking his right shoulder with great force.

Although his shoulder was painful, Mr. Coolidge thought it would improve without treatment; by September 26, the pain had increased so he reported the injury to the Peoria office of the Division of Highways. He was advised to see a doctor immediately. Claimant consulted his family physician who advised heat and limited use; however, the shoulder responded poorly to the treatment, and on October 28, his family physician suggested examination by Dr. Hugh Cooper, who maintained offices in Peoria. On October 29, 1945, Dr. Cooper reported to the Division of Highways that claimant was suffering from "sub-deltoid bursitis" of the right shoulder. On January 5, 1946 Dr. Morton, the family physician, reported to the Division of Highways as follows: "Mr. Albert Coolidge is still under my care for his shoulder. His recovery is still indefinite." The claimant remained under the care of Dr. Morton who gave him hydrotherapy and massage treatments of the injured shoulder and discharged him from further treatment on March 30, 1946.

The respondent has paid the following bills incurred in this accident: Dr. Hugh Cooper, Peoria, \$6.00; Dr. D. H. Morton, Elmwood, \$8.00; St. Francis Hospital, Peoria, \$34.50.

The record contains a copy of a letter dated February 14, 1947 signed by Dr. Hugh Cooper, Orthopedic Surgeon, Peoria, Illinois, which states that this physician

examined claimant on October 29, 1945 and at that time claimant had considerable limitation of rotation and abduction of the right shoulder joint. X-rays at that time were negative so far as any fracture or dislocation was concerned. He saw claimant a month later at which time he still had rather marked limitation of motion in the shoulder joint and in the opinion of this physician, was unable to work.

Commissioner East heard the testimony in support of this claim, observed the claimant, examined and manipulated the shoulder and reports that claimant has suffered a 40% functional loss of use of the right arm and we adopt his recommendation as a basis of our award.

Claimant's average weekly wage, based on his annual earnings for the year next preceding the injury, is \$38.37. The compensation rate therefore is \$18.00. If claimant had lost the complete use of his right arm, he would have been entitled to receive, under the Workmen's Compensation Act, as amended, the sum of \$18.00 for 225 weeks. Having lost 40% of the functional use of this arm, claimant is entitled to 90 weeks at his compensation rate, making the sum of \$1,620.00.

An award is therefore hereby entered in favor of Albert E. Coolidge in the sum of One Thousand Six Hundred Twenty (\$1,620.00) Dollars representing 40% functional loss of use of his right arm as provided under Section 8(e) of the Workmen's Compensation Act, as amended. Of this amount, the sum of \$1,476.00 has accrued, representing 82 weeks as of April 23, 1947 which is payable in a lump sum forthwith. The remainder of said award, amounting to the sum of \$144.00, is payable to claimant at the rate of \$18.00 per week beginning April 30, 1947 and continuing weekly thereafter at said

compensation rate until the last mentioned sum is fully paid.

This award is subject to the approval of the Governor as provided in Section 3 of, "An Act concerning the payment of compensation awards to State employees."

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(No. 3989—Claimant awarded \$52.75.)

SHELL OIL COMPANY, INC., Claimant, vs. STATE OF ILLINOIS,  
Respondent.

*Opinion filed April 24, 1947.*

SHELL OIL Co., pro se.

GEORGE F. BARRETT, Attorney General, for respondent.

SUPPLIES—*lapse of appropriation out of which could be paid—before presentment of bill—sufficient unexpended balance an appropriation—when award for value may be made.* Where, it clearly appears that claimant furnished supplies or rendered services to the State, for which an appropriation existed out of which payment could be made therefor, an award may be made for reimbursement or payment for said supplies or, services where such appropriation lapsed before payment was made for same, and sufficient unexpended balance therefor remains therein, on claim filed in reasonable time.

BERGSTROM, J.

This claim was filed on September 20, 1946 by the claimant, Shell Oil Company, Inc. for \$52.75, which claimant alleges is due for deliveries of gasoline and oil to the Illinois Soldiers' and Sailors' Children's School, Normal, Illinois.

The record consists of the Complaint, Report of The Illinois Soldiers' and Sailors' Children's School of Normal, Illinois, and Waivers of Briefs.

The complaint alleges that deliveries were made to the said School as follows :

May 1, 1945—100 gal. gasoline.. .. .	\$13.40
May 26, 1945—100 gal. gasoline.....	13.40
June 26, 1945—49 gal. oil. .... .	9.31
June 26, 1945—52 gal. oil.. .. .	16.64
Total .....	<u>\$52.75</u>

and that invoices were submitted within a reasonable time, but could not be paid because of the expiration of the time limit for payment from the appropriation of the 63rd biennium. The merchandise was ordered and delivered under State of Illinois blanket purchase order number D-124367 for period July 1, 1944 to June 30, 1945.

In the report of The Illinois Soldiers' and Sailors' Children's School, receipt of the merchandise is acknowledged; also that claimant has not received payment.

Where claimant has rendered service to the State of Illinois in accordance with a duly authorized contract, has submitted its statement of costs and charges to the respondent within a reasonable time and has, not received payment, there remaining a sufficient unexpended balance in the appropriation from which payment could have been made, the claimant is entitled to an award. (The Texas Company vs. State of Illinois, 15 C.C.R. 112; Illinois Bell Telephone Company vs. State of Illinois, 15 C.C.R. 115 and cases therein cited).

An award is therefore entered in favor of claimant, Shell Oil Company, Inc. in the sum of \$52.75.

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(No. 4001—Claimant awarded \$2,160.00.)

GROVER T. WHITE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.  
*Opinion filed April 24, 1947'.*

FREDERICK E. MERRITT, for claimant.

GEORGE F. BARRETT, Attorney General, and C.  
ARTHUR NEBEL, Assistant Attorney General, for respondent.

*WORKMEN'S COMPENSATION ACT—employee on the Department of Public Works and Buildings—within provisions of— when award for compensation for the loss of an eye justifies.* Where it appears that an employee of the State sustained accidental injuries arising out of and in the course of his employment resulting in the loss of an eye, an award may be made for compensation therefor, under the provisions of the Act, upon compliance by the employee with the terms thereof.

### BERGSTROM, J.

This claim was filed on December 16, 1946, and alleges that claimant, Grover T. White, was employed by respondent in the Department of Public Works and Buildings, Division of Highways, and while so employed on August 20, 1946 unloading rock out of a railroad car onto a conveyor belt and in the course of his employment, his right eye became filled with foreign material and dust, became infected and, as a result, later had to be removed. He claims compensation for the loss of his right eye.

The record consists of the Complaint and Report of the Division of Highways. From the record, the jurisdictional requirements have been satisfied, and the claimant was injured during the course of and out of his employment.

August 20, 1946, the day on which this cause of action arose, claimant was 53 years of age, married, and had one child six years of age, dependent upon him for support. He was first employed by the Division of Highways as a common laborer on June 28, 1946 at a wage rate of \$1.10 per hour. His classification and wage rate remained unchanged during his period of employment with the Division of Highways. Earnings exclusive of overtime for his period of employment were \$468.33. Employees working in a capacity similar to that of claimant ordinarily work less than 200 days per year. Eight hours constitute a normal working day. His compensation rate, therefore, would be \$15.00 per week. The injury having

occurred subsequent to July 1945 this must be increased 20%, making a compensation rate of \$18.00 per week.

On August 20, 1946 claimant was engaged in transferring crushed limestone rock from railroad cars to trucks by hand shoveling. The scene of operation was the Illinois Central Railroad siding in Kinmundy, Marion County, Illinois. The shoveling by several employees caused much dust to be raised and, on several occasions during the day, limestone dust got into claimant's eye. On each occasion he attempted to rub the dust out of his eyes, and continued with his work. That evening his right eye began to smart and burn. In the days following, his eye continued sensitive, and claimant secured colored glasses to protect it from the sunlight and the dust resulting from the nature of the work.

He did not report his injury to the Division of Highways until September 16, 1946. His foreman requested him to go to the Haley Eye Infirmary, Centralia, Illinois, for treatment. Dr. Max Kirschfelder of the Haley Eye Infirmary, who examined claimant's eyes requested authorization for his hospitalization. The Division of Highways made an investigation of the injury and then completed arrangements for such treatment as should be prescribed by Dr. Lawrence T. Post, and on September 19, 1946 claimant was sent to St. Louis where Dr. Post made arrangements for his admittance to the McMillan Hospital. On September 20, 1946 Dr. Post sent the Division of Highways the following report :

"Examination of Mr. Grover T. White on September 19 revealed an extensive infected ulcer of the right cornea. The vision in this eye was light perception. The other eye appeared normal. A cauterization was performed of the ulcer and the patient hospitalized. The outlook is very bad but it was thought that an effort should be made to preserve the eyeball if possible. If no improvement takes place within about a week. enucleation should be done."

On October 1, 1946 Dr. Post further reported, as follows :

"I was unable to save Mr. Grover T. White's eye and had to perform an evisceration of the globe on September 25. The eye was full of hard matter at that time and was in a hopeless condition.

I sent him home on the 20th with instructions of how to keep the eye clean. I should like to have him return on Thursday, October 10, at twelve o'clock for the fitting of an artificial eye."

On October 10, 1946 claimant was fitted with an artificial eye, was then discharged and told that he should be able to return to work at once.

Claimant was paid compensation for total temporary disability at the rate of \$18.00 per week for the period from September 17, 1946 to and including October 15, 1946 in the amount of **\$74.57**. The following creditors have been paid in connection with this injury:

Haley Eye Infirmary, Centralia.. .....	\$ 10.00
Dr. Lawrence T. Post, St. Louis, Mo.....	209.00
McMillan Hospital .....	93.35
Grover T. White, expenses.. .....	30.35
	<hr/>
Total .....	\$342.70

From the evidence, claimant is entitled to receive the sum of \$2,160.00 for the loss of the sight of an eye, based on 120 weeks at a compensation rate of \$18.00 per week.

As claimant lost the sight of an eye, the sum of \$100.00 should also be paid to the Treasurer of the State of Illinois for the special fund provided in Section 7, par. E of the Workmen's Compensation Act and as authorized under section 8, par. E, sub-par. 20 of the said Act.

An award is therefore entered in favor of claimant, Grover T. White, in the sum of \$2,160.00, payable as follows :

\$ 504.00, which has accrued and is payable forthwith;  
 \$1,656.00, payable in installments of \$18.00 per week for 92 weeks,  
 commencing May 7, 1947.

An award is also entered for the sum of \$100.00, payable to the Treasurer of the State of Illinois.

This award is subject to the approval of the Governor as provided in section 3 of "an Act concerning the payment of compensation awards to State employees."

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(No. 4002—Claimant awarded \$4,800.00.)

MAY SMITH, WIDOW OF RICHARD SMITH, DECEASED, Claimant, *vs.*  
STATE OF ILLINOIS, Respondent.

*Opinion filed April 24, 1947.*

SHERWOOD L. COSTIGAN, for claimant.

GEORGE F. BARRETT, Attorney General, and WM. L. MORGAN, Assistant Attorney General, for respondent.

**WORKMEN'S COMPENSATION ACT**—*employee at East Moline State Hospital within provisions of—when an award for compensation for death of employee may be made to dependent widow—under.* Where it appears that deceased employee sustained accidental injuries arising out of and in the course of his employment, resulting in his death, an award for compensation may be made therefor, under Section 7 (a) of the Workmen's Compensation Act, to those legally entitled thereto, upon compliance with the requirements thereof.

DAMRON, J.

Claimant, May Smith, filed her complaint herein on December 16, 1946, seeking an award under the Workmen's Compensation Act for the death of her husband, Richard Smith.

The record consists of the complaint, departmental report, stipulation with reference to report, claimant's waiver of brief, respondent's waiver of brief, and the commissioner's report.

The record discloses that claimant's decedent, Richard Smith, was employed at East Moline State Hospital by the Department of Public Welfare. On October 28, 1946 deceased was assisting in the unloading of a railway

coal car on the premises of the hospital. The brake of the car was released and as it moved downgrade, it struck a derail and the impact threw deceased from the car platform to the ground in front of the moving car which ran over and fatally injured him. The respondent had immediate notice of the accident.

From this record we make the following findings: that the claimant's deceased husband, Richard Smith, at the time of the injury which resulted in his death was 66 years of age, and had no children under the age of 16 years dependent upon him for support.

The Court further finds that the injury which resulted in the death of claimant's husband arose out of and in the course of his employment for the respondent; that at the time of the accident, his rate of pay was \$145.00 per month and that his earnings during the year next preceding his death were \$1,740.00.

An award is hereby entered in favor of the claimant, May Smith, widow of Richard Smith in the sum of Four Thousand Eight Hundred (\$4,800.00) Dollars as provided in Section 7(a) of the Workmen's Compensation Act, as amended. Of this amount, the sum of \$450.00 has accrued as of April 22, 1947 and is payable to her in a lump sum forthwith. The remainder of said award amounting to the sum of \$4,350.00 is payable to her weekly in installments of \$18.00 commencing on April 29, 1947 and continuing each week thereafter at said compensation rate until the last mentioned sum has been fully paid. Such future payments being subject to the terms of the Workmen's Compensation Act of Illinois; jurisdiction of this cause is hereby retained for the purpose of making, such further orders as may from time to time be necessary herein.

This award is subject to the approval of the Gover-

nor as provided in Section 3 of, "An Act concerning the payment of compensation awards to State employees."

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(No. 3497 — Claimant awarded \$2,910.60.)

RONDA R. WEBER, WIDOW OF HERBERT WEBER, DECEASED,  
Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed May 13, 1947.*

PAUL D. PERONA and WILLIAM ZWANZIG, for claimant.

GEORGE F. BARRETT, Attorney General; GLENN A. TREVOR and C. ARTHUR NEBEL, Assistant Attorneys General, for respondent.

WORKMEN'S COMPENSATION ACT—*attendant at Manteno State Hospital—when typhoid fever contracted during epidemic constitutes an accidental injury compensable under—resulting in death of employee—when award may be made to dependent widow and children.* Where an employee of the State contracts typhoid fever during a prevailing epidemic, it constitutes an accidental injury under the Act, *Ade vs State*, 13 C. C. R. 1; and when it results in the death of said employee, an award for compensation therefor, may be made under Section 7a of the Workmen's Compensation Act—to those legally entitled thereto, upon compliance with the requirements thereof.

ECKERT, C. J.

On September 1, 1939, Herbert Weber, employed as an attendant at the Manteno State Hospital, contracted typhoid fever in the course of his employment. In the original complaint, filed in this case by Herbert Weber in his lifetime, it was alleged that as a result of the typhoid fever he had been unable to carry on his usual and customary duties, and had suffered a severe kidney infection. He sought an award for medical and hospital services, total and permanent disability, and life pension.

Herbert Weber died November 7, 1946, and thereafter, by leave of court, an amended complaint was filed by the claimant, Ronda R. Weber, as widow of Herbert Weber, deceased, alleging that she was married to Her-

bert Weber on June 30, 1932 and that decedent left surviving, as his only heirs, Ronda R. Weber, his widow, and Geoffrey Lewis .Weber, his son, who was born on January 31,1944. The amended complaint alleged that the death was the direct and proximate result of the typhoid fever contracted while Weber was employed by the respondent.

When the illness was contracted, decedent and respondent were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the illness and claim for compensation were made within the time provided by the act. A typhoid fever epidemic existed at the Manteno State Hospital from July 10, 1939 to December 10, 1939. Typhoid fever contracted during this epidemic constitutes an accidental injury which is compensable under the Workmen's Compensation Act. (*Ade vs. State*, 13 C.C.R. 1).

Decedent's annual earnings for the year next preceding his illness were \$672.00, making an average weekly wage of \$12.92. Since he had one child under sixteen years of age living at the time of his death, his compensation rate is the minimum of \$11.00 per week. The illness having occurred subsequent to July 1, 1939, this must be increased 10%, making a compensation rate of \$12.10. Decedent was totally incapacitated from September 1, 1939, to November 6, 1939, a period of nine and two-sevenths weeks. During that time he received for non-productive work the sum of \$127.40, which must be deducted from any award entered in this case.

Herbert Weber, testifying on his own behalf, at the original hearing, stated that on August 29, 1939, he reported to Dr. Spinka, Staff Physician at the Manteno State Hospital, that he was suffering from an abdominal disorder; that Dr. Spinka advised him to go to his room,

and that if he did not feel better by morning, and needed medical or hospital services, to secure them wherever available, Because the hospital at the institution was already filled with typhoid fever patients. The following day he went to the Coleman Clinic at Canton, Illinois, where Dr. Bennett sent him to the Graham Hospital. Weber remained there from August 30th to October 6th, 1939. The total charges paid to the hospital for that period amounted to \$128.70.

Weber further testified that on February 27, 1940, he had a relapse, and returned to the Graham Hospital where he was found to be a typhoid carrier. He remained at the hospital from February 27th, to March 31st, 1940, and paid total hospital charges for that period of \$122.94. Because his condition did not improve, he was subsequently taken to St. Luke's Hospital in Chicago for the removal of one kidney. He remained there from November 8th to December 6th, 1942, at a total expense of \$471.54. From December 23, 1942, to January 17, 1943, Weber was again treated at the Graham Hospital, at Canton, at a total expense of \$209.10, and from January 30, 1946, until March 10, 1946, at a total expense of \$416.00.

Weber also testified that he had paid the following medical expenses : Dr. E. P. Coleman \$226.50; Dr. Harry Culver, \$285.00; Dr. Daniel K. Hur, \$54.00, or a total of \$565.50. Additional expenses incurred by Weber just prior to his death were as follows :

Graham Hospital .....	\$34.48
Prescriptions and Medicines. ....	12.00
Medical services, Coleman Clinic.....	54.00

Decedent further testified that for a period of four years after his original illness, except during the several periods of hospitalization, he worked as a guard at the

Elwood Ordnance Plant at a salary at \$34.00 per week, plus over-time pay. He stated, however, that he had been unable to do any work since October, 1945.

Dr. David A. Bennett, testifying on behalf of Weber, stated that he examined Weber on August 30, 1939, and found that he had typhoid fever; that he treated him at the Graham Hospital from August 30, to October 6; that on October 24, 1939, Weber was found to be negative of typhoid fever, but that he again saw Weber on February 15, 1940, and Weber was then running pus cells in his urine. An intravenous pyelogram was done at that time, and on March 1st, 1940, a blood test showed positive typhoid.

Dr. Bennett testified that on May 20, 1940, a specimen of urine showed typhoid bacilli present, a condition which remained throughout 1940, and for which Weber was continuously treated. Tests made on November 1st, 1941, November 8th, 1941, and November 17, 1941, showed Weber still a typhoid carrier in the urine. On November 18, 1941, and on February 15, 1942, a cystoscopy was done at the hospital. Typhoid was still present in the urinary tract.

Dr. Bennett testified that in December, 1942, Weber's right kidney had become abscessed, the infection in the left kidney having infected the right kidney, developed stones, and so damaged the right kidney as to necessitate its removal. On January 30, 1946, Dr. Bennett found stones in the left kidney, one of which was impacted in the left ureter, causing uremia. The stone was removed at that time, but other stones still remained in the left kidney, which had only a limited function.

Dr. Bennett stated, at that time, that the original typhoid infection caused Weber to become a typhoid carrier; that the resulting infection in the kidney would be

the cause of his ultimate death; that the typhoid had so infected the remaining kidney that Weber's life expectancy was definitely lessened. Dr. Bennett stated that claimant was then totally incapacitated, and that his condition was permanent. From the proof submitted on hearing, following the death of Herbert Weber, it appears that his death was the direct result of the original typhoid fever infection, being caused by uremia, as Dr. Bennett predicted.

Claimant is therefore entitled to an award on account of the death of Herbert Weber, under Section 7a of the Workmen's Compensation Act of this state, in the amount of \$3,038.00, less the sum of **\$127.40 paid** to decedent for non-productive work, or the sum of **\$2,910.60**.

Marguerite Corso was employed to take and transcribe the evidence at the hearings before Commissioner Jenkins. Charges in the amount of **\$57.60** were incurred for these services, which charges are fair, reasonable, and customary.

An award is therefore entered on account of medical, hospital and nursing services in the sum of **\$2,014.26** payable forthwith as follows :

Graham Hospital, Canton, Illinois.....	\$911.22
St. Luke's Hospital, Chicago, Ill. ....	471.54
Dr. E. P. Coleman.....	226.50
Dr. Harry Culver.....	285.00
Dr. Daniel K. Hur.....	54.00
Coleman Clinic, Canton, Ill. ....	54.00
Ronda R. Weber, reimbursement for purchasing prescriptions and medicines .....	12.00

An award is entered in favor of Marguerite Corso in the amount of **\$57.60**, payable forthwith.

An award is entered in favor of Ronda R. Weber, widow of Herbert Weber in the amount of **\$2,910.60** to be paid to her as follows:

- \$ 612.71, which had accrued under the terms of an award made to the decedent immediately prior to his death on account of permanent disability, and which is payable forthwith;
- 326.70, which has accrued since the death, and which is payable forthwith;
- 1,971.19, which is payable in weekly installments of \$12.10 per week, beginning on the 16th day of May, 1947 for a period of 162 weeks, with an additional final payment of \$10.99.

All future payments being subject *to* the terms and conditions of the Workmen's Compensation Act of Illinois, jurisdiction of this cause is specifically reserved for the entry of such further orders as may from time to time be necessary.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

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(No. 3918—Claimant awarded \$3,705.75.)

**GOLDBLATT BROS., INC., A CORPORATION**, claimant *vs.* **STATE OF ILLINOIS**, Respondent.

*Opinion filed May 13, 1947.*

**BERNARD ROSENCRANZ, BERNARD BROWN**, Attorneys for claimant.

**GEORGE F. BARRETT**, Attorney General, **WM. L. MORGAN**, Assistant Attorney General, of counsel, for respondent.

**ILLINOIS WATERWAY ACT**—*State liable for damages to persons in the construction, maintenance or operation thereof and its appurtenances.* Under Section 23 of the Illinois Waterway Act (Chap. 19, Section 101, Smith-Hurd Annotated Statutes,) the State is liable for damages to persons caused by the construction, maintenance or operation of the Illinois Waterway and its appurtenances, and where a person sustains accidental injuries by reason of the sudden raising of a bridge without notice by a bridge tender—an employee of the State, the proximate cause of the injury was the negligent act or omission of the State's employee at and before the happening of the accident, and is compensable.

*WORKMEN'S COMPENSATION ACT—where injured employee and his employer—and the State and its employee are operating under and within the provisions of the Act—and the proximate cause of injury was the negligent act of omission of the State's employee—a right of action against the State for recovery of damages sustained exists in favor of employer of injured employee.* Section 29 of the Workmen's Compensation Act provides that where an injury or death for which compensation is payable by the employer under the Act was caused under circumstances creating a legal liability for damages in some person other than the employers, and the other person having elected to be bound by the Act, and is being bound thereby under Section (3) of the Act, then the right of employee to recover against such other person shall be transferred to his employer and such employer may bring legal proceedings against such other person to recover the damages sustained in an amount not exceeding the aggregate amount of compensation payable under the Act by reason of such injury or death of such employee.

### **DAMRON, J.**

This is a claim of Goldblatt Bros., Inc., for an award in the sum of \$3,705.75.

The claim is based on Section 29 of the Workmen's Compensation Act which provides that where an injury or death for which compensation is payable by the employer under the Workmen's Compensation Act was caused under circumstances creating a legal liability for damages in some person other than the employers, such other person having also elected to be bound by the Act, or being bound thereby under Section (3) of the Act, then the right of the employee to recover against such other person shall be transferred to his employer and such employer may bring legal proceedings against such other person to recover the damages sustained in an amount not exceeding the aggregate amount of compensation payable under the Act by reason of such injury or death of such employee.

The complaint alleges that claimant's employee, Ira Messersmith, on the 3rd day of September 1943, was injured while walking across the Cass Street Bridge of the

Illinois Waterway, at Joliet, Illinois, and through the negligent act of the bridge tender in raising said bridge without due notice, caused Ira Messersmith to slide down the western slope of the raised bridge, fracturing his left hip and injuring his right knee.

At the hearing before the Commissioner, the claimant introduced a certified copy of an application for adjustment of claim which was filed with the Industrial Commission by the said Ira Messersmith on the 5th day of December 1944, against Goldblatt Bros., Inc., alleging that he sustained an accidental injury on the 3rd day of September 1943, arising out of and in the course of his employment. On the 23rd day of February 1945, an arbitrator awarded compensation at the rate of \$11.16 per week for a period of 416 weeks and one week at \$1.04 and thereafter a pension during his lifetime, as provided in Paragraph (f) Section 8 of the Workmen's Compensation Act, as amended. No petition for review by the Industrial Commission was ever filed by either Messersmith or Goldblatt Bros., Inc., but on the 3rd day of March, 1945, Messersmith settled his claim under the award with this claimant for \$2,000.00. A settlement contract and petition for lump sum in the sum of \$2,000.00 was filed with the Industrial Commission, and on the 14th day of March 1945, the settlement contract was approved, the petition for the lump sum was granted and the sum of money was paid to said Ira Messersmith, by this claimant.

The claimant contends that the respondent should reimburse it for all money expended, because it says that its employee was injured through the negligent act of the bridge tender, who was an employee of the State of Illinois, on the date of the occurrence.

It is the contention of the respondent that as no

liability or responsibility rested upon the State of Illinois for the negligent or tortuous acts of its officers, agents, or employees at the time of the events upon which said claim is based, the claimant has not stated a cause of action and therefore its claim should be dismissed.

Section 23 of the Illinois Waterway Act (Chap. 19, Section 101 Smith-Hurd Annotated Statutes) makes provision for the liability of the State for all damages

- (a) to real estate or personal property within or without the radius or zone of the Illinois Waterway and for all damages.
- (b) to persons caused by the construction, maintenance or operation of the Illinois Waterway and its appurtenances.

The respondent in resisting this claim, while admitting that the above provision in the Waterway Act makes provision for the liability of the State for damages to real estate, personal property, and to persons, denies that this Act has any application to the case in question because it says the Cass Street Bridge in Joliet, over the Illinois Waterway, is a part of Illinois SBI Rt. No. 22 and that the construction of said bridge and the maintenance thereof was for the purpose of carrying said route over the Illinois Deep Waterway and was a part of the construction by the State, of a state-wide system of durable hard surface roads upon the public highways of Illinois, and therefore the State cannot be bound nor is liable to another for the negligent acts of its officers, agents, or employees in the performance of their governmental functions in the Highway Department.

This Court will take judicial notice that sometime prior to the year 1932, the respondent commenced the construction of the Illinois Waterway through the City of Joliet and was engaged in such construction work during all the year of 1932 and for some time thereafter. Said waterway in passing through the City of Joliet runs in a

northerly and southerly direction and in general, following the bed of the DesPlaines River and the Illinois and Michigan Canal and occupies the space thereto which was occupied by said River and Canal.

Cass Street in said City of Joliet, extends in an easterly and westerly direction and intersects the Illinois Waterway at right angles. Prior to the time of the construction of the Illinois Waterway, said DesPlaines River and said Illinois and Michigan Canal were crossed by a public bridge approximately level and at grade on Cass Street.

Respondent commenced the work of demolishing the then existing bridge on Cass Street about May 1, 1932 and commenced the construction of a new bridge on said street to take the place of the old bridge. The Cass Street bridge and approaches were completed about the 1st day of January 1933. It was so constructed as to provide a clearance thereunder of 16½ feet, thereby making the floors of said bridge approximately 18 feet higher at the crown than the floors of the old bridge. *Stein et al vs. State* 8 C.C.R. 251 at 253. This new construction was necessary in order to permit boats and barges travelling this water route to clear. It was a part and parcel of the specifications of the waterway system. It had no connection with the needs of the Highway Department and although it was under the jurisdiction of the Department of Public Works and Buildings (Division of Highways) the layout and construction of said bridge was primarily for the accommodation of traffic on the waterway system as aforesaid. So far as the demand for highway purposes was concerned, there is nothing in the record that indicates there was need for the reconstruction of said bridge or the building of an incline approach thereto. It must be admitted that the canal was being reconstructed as a

part of the Illinois Deep Waterway project and that as a part of such program, it was deemed necessary to elevate the Cass Street Bridge to aid in carrying out the purposes of the Deep Waterway.

It is the contention of the respondent that the Cass Street Bridge is a part of the Highway Department and has nothing to do with the Waterway Department and in support of its contention cites Section 84, Paragraph 5 of Chap. 19, Illinois Revised Statutes which defines the powers of the Department of Public Works and Buildings as follows :

“84. Department of Public Works and Buildings to control. The construction, maintenance, control and operation of ‘Illinois Waterway’ and its appurtenances shall devolve upon the Department of Public Works and Buildings.”

Respondent argues that since claimant’s employee was injured as a result of sliding down the bridge toward the west when the bridge was opened for the purpose of being painted, and since the injured man was found lying on the highway off of the bridge, and since the bridge is no part of the Department of Waterway but belongs to the Highway Department, claimant should not maintain its action and an award should be denied.

If we could agree with respondent that the Cass Street Bridge was not a part of the Illinois Waterway, the motion to deny an award would be sustained. This Court has had many claims filed before it and the decisions rendered consistently adhered to the rule that the State was not liable for the negligence or torts of its officers, agents, or employees under, “An Act creating the Court of Claims and prescribing its powers and duties” approved June 25, 1917. *Brookshire vs. State*, 14 C.C.R. 134; *Sanford vs. State*, 12 C.C.R. 360. In *Turner et al vs. State*, 12 C.C.R. 265 we held the State is not liable for the

negligence of its officers, agents, or employees in the conduct of a governmental function in the absence of a statute making it liable. To the same effect are *Hewlett vs. State*, 13 C.C.R. 27 and *Hallisey vs. State*, 14 C.C.R. 156.

The Waterway Act specifically provides in Section 23 that if damages are sustained by a person through a negligent act in the construction, maintenance, or operation of the Waterway and its appurtenances, the State shall be liable. It is evident that the Legislature in the enactment of this statute, intended to make an exception to the rule as laid down in the cases above cited.

Upon consideration of the record in this case, we find that the proximate cause of the injury to claimant's employee was the negligent act of omission of the respondent's bridge tender at and before the happening of the accident. We further find that said negligent act of respondent's employee created a legal liability as provided in Section 29 of the Workmen's Compensation Act, as amended, and at the time of the occurrence, said employee and respondent were operating under the provisions of said Act.

The evidence discloses that claimant has been put to an expense for hospitalization, medical, and its settlement with its employee through the Industrial Commission, of \$3,705.75 for which it is entitled to be reimbursed.

An award is therefore entered in favor of Goldblatt Bros., Inc., in the sum of Three Thousand Seven Hundred Five Dollars Seventy-Five Cents (\$3,705.75).

D. V. Sheffner, Geneva, Illinois, has presented a bill for reporting services in this cause in the sum of \$62.00, and A. M. Rothbart, Court Reporting Services, has presented a bill for taking and transcribing certain portions of the testimony in the sum of \$22.60.

The Act creating the Court of Claims of Illinois does not contain a provision authorizing this Court to enter an award for these services in a claim such as this. These claims must therefore be denied.

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(No. 3949—Claimant awarded **\$496.86.**)

WATER WORKS COMMISSION, A QUASI-MUNICIPAL CORP., OF THE CITY OF QUINCY, ADAMS COUNTY, ILLINOIS, Claimant. *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed May 13, 1947.*

FRANK J. DICK, for claimant.

GEORGE F. BARRETT, Attorney General, C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

**CONTRACTS**—*State institutions liable for water supplied to it by a quasi-municipal corporation—purchase of water for use at Illinois, Soldiers and Sailors Home is authorized by law.* Where it appears that a quasi-municipal corporation actually furnished water to the Soldiers and Sailors Home and the same ~~was not~~ fully paid for because through an error or inadvertence the water was not metered, the State institution must nevertheless **pay for** it—since under the law it is a requirement that institutions procure and furnish water **for** its inmates.

DAMRON, J.

This claimant, a Quasi-Municipal Corporation of the City of Quincy, Illinois, by its president, files its claim herein for an award for water service furnished by it to the Illinois Soldiers and Sailors Home at Quincy, Illinois which is owned and operated by respondent.

It appears from the record that a new infirmary was erected at said Institution by the respondent and that water furnished by the claimant for the use of such infirmary, through inadvertence or otherwise, was not metered.

The record further discloses that a conference was had between the officers of the Soldiers and Sailors Home

and claimant in which it was determined that for water furnished by claimant to the new infirmary, there was due the claimant the sum of **\$496.86**; but inasmuch as the appropriation from which this amount could be paid had lapsed at the time of the discovery and the determination of the amount due, there were no funds available from which the Institution could pay such amount, therefore, this claim was filed in this Court.

The departmental report of the Department of Public Welfare admits that the water was furnished by claimant to respondent's infirmary and recommends that the claim in the above amount be allowed.

This Court has held that where it appears that water was actually furnished to an institution operated and under the control of the respondent, and was not fully paid, the state institution must pay for it since under the law it is a requirement that institutions procure and furnish water for its inmates. *City of Jacksonville vs. State*, 15 C.C.R. 62.

An award is therefore entered in favor of claimant, Water Works Commission, a Quasi-Municipal Corporation of the City of Quincy, Adams County, Illinois, in the sum of Four Hundred Ninety-Six Dollars Eighty-six Cents (**\$496.86**).

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(No. 3992—Claimant awarded \$1,226.40.)

**JOHN O'DORNAN**, Claimant, *vs.* **STATE OF ILLINOIS**, Respondent.  
*Opinion filed May 13, 1947.*

**HARRY A. SEWELL**, **EUGENE LIEBERMAN**, Attorneys for claimant.

**GEORGE F. BARRETT**, Attorney General, **WM. L. MORGAN**, Assistant Attorney General, for respondent.

**WORKMEN'S COMPENSATION ACT**—*employee of the Chicago State Hospital within provisions of when claim for partial incapacity under*

*paragraph (d) Section 8 of Act must be sustained by proof of loss, of earnings resulting from accidental injury—failure to show any diminution of earnings after accident—bars an award.* Where employee of State sustained accidental injuries arising out of and in the course of his employment resulting in an injury to his back, but was nevertheless able to return to work and earn as much or more than he did prior to said accident—no award for compensation for partial incapacity can be made under Section 8, paragraph (d) of the Workmen's Compensation Act, since compensation in such cases is based on reduced earning capacity and is measured by such loss. *Groveland Coal Co. vs. Industrial Commission*, 309 Ill. 73, at 74; *Consolidated Coal Co. vs. Industrial Commission*, 314 Ill. 526 at 528; *Dial vs. State*, 15 C. C. R. 53.

*SAME—where loss of earning capacity is not a condition to recovery under paragraph (e), Section 8, of the Act—when pre-existing conditions of disease are aggravated by an accidental injury, the disability resulting from such aggravation as compensable under the act.* Where an employee was afflicted with a pre-existing arthritic condition and subsequently sustained accidental injuries, which aggravated his condition, resulting in a permanent partial loss of the use of his legs, an award may be made for compensation therefor under paragraph (e), Section 8 of the Workmen's Compensation Act. Loss of earning capacity is not a condition to recovery for specific losses under this paragraph—*Nokomis vs. Industrial Commission*, 308 Ill. 609.

DAMRON, J.

This compla.int was filed October 8, 1946 seeking an award under the Workmen's Compensation Act for disability and reimbursement for medical expense by reason of injuries alleged to have been sustained in an accident on March 21, 1945.

It was stipulated, upon the hearing, that the injury arose out of and in the course of claimant's employment. All jurisdictional questions are resolved by the stipulation and the evidence.

The transcript of evidence was filed on February 28, 1947.

The claimant, John O'Dornan, is 55 years of age and has been employed continuously since 1931 by the Department of Public Welfare as a maintenance man in the Engineering Department at the Chicago State Hospital. During the year immediately preceding the acci-

dent his rate of pay was \$1.75 per hour and his gross annual earnings were \$3,449.25.

On March 21, 1945 in the course of his duties he lifted steel beams and ovens in the bakery shop at the hospital which was then being remodeled. Prior to this date, claimant experienced no physical difficulty although his work necessitated lifting and moving heavy objects. On this date, he complained to the master mechanic that he was injured and could not work any more. He was directed to the employee's hospital where he was told he probably had caught "cold in his back" from a draft and was instructed to take heat treatments. That was the only treatment he received from respondent. Ten days later Dr. Benjamin Cohen of the hospital staff visited and examined him at his home but did not prescribe treatment.

The day following the accident claimant consulted his own doctor. In July 1946 he was reimbursed by respondent in the sum of \$142.50 for his medical expense. Since then he has continued medical treatment and has expended \$177.75 additional for physicians, x-rays and medicine for which he has not been reimbursed.

Claimant returned to work on May 9, 1945 and was fully compensated by respondent for this period of temporary total disability.

Since resuming employment claimant has worked steadily. There is no evidence to show that he has earned less than he did prior to March 21, 1945. On the contrary he testified that he is now receiving more money than he did prior to the injury. He is doing his regular work with the exception of lifting heavy objects but experiences almost constant pain at the base of his spine while moving around and is no longer able to lift heavy objects or carry heavy burdens.

Dr. Benjamin Cohen called by respondent testified

he examined claimant in the latter part of March 1945; he took no x-rays and diagnosed claimant's condition as lumbar myositis which is an inflammation of the muscles in the lumbar region caused by lifting, straining and similar activities. Dr. Cohen's diagnosis was "merely a clinical impression." An x-ray taken when claimant returned to work disclosed osteoarthritis involving the articular facets.

Dr. L. Willard Shabat testified on behalf of claimant. Respondent conceded Dr. Shabat's qualification. He examined claimant on September 17 and October 5, 1946 and again on February 1, 1947. His objective findings in relation to the complaint in question disclosed marked restriction of forward, lateral, and backward motion of the spine; restriction of straight leg raising on either side but especially the left leg as shown by the Guenslen and Laguerre tests indicative of lumbo-sacral and sacroiliac involvement and marked spasm of both erector spinal groups of muscles. X-ray films of claimant's back were interpreted as showing evidence of arthritic changes of lipping along the lateral aspect of the bodies of the vertebrae and in the lumbo-sacral joint. These lippings evidencing outgrowth of bone presented a severe type of osteoarthritis. Claimant's forward motion of the spine is 35 degrees or 60% less than the 90 to 100 degree normal faculty. The lateral sway of the spine is only 20 degrees to either side as contrasted with a normal range of 45 degrees. He has pain in arching his back and has what is called a stiff or "poker" back. On the basis of these findings claimant in the opinion of Dr. Shabat had a 35% disability of his back. The condition in his judgment is permanent and progressive. It invariably involves locomotion and causes disability of the lower extremities. As the condition progresses and the overgrowth of bone is

laid down in the course of nature's compensatory healing the tendency is to "freeze" the joint even more, the person cannot bend and his lower extremities become rigid. The limited movements and restricted locomotion of his lower extremities are definitely related to the degree of motion he can obtain from his back and hence it is definitely impaired.

He further testified to a direct causal relationship between the lifting of the heavy objects on March 21st and the condition as above described and that the pre-existing arthritic condition was aggravated by the injury.

On cross-examination, Dr. Shabat stated injury will not accelerate arthritis ; it will merely elicit symptoms in a silent type of arthritis and that had claimant sustained no accident, he would still have an arthritic condition which would develop progressively. On redirect examination, he stated these arthritic conditions could exist for years without symptoms evidenced to the patient until an excessive lift or pull or other exciting factor would provoke or start off the vicious cycle.

This evidence will not warrant an award for either temporary total incapacity under Sec. 8(b) of the Workmen's Compensation Act or for partial incapacity under the provisions of paragraph (d) of that section.

Paragraph (d) in substance provides that where, after and as a result of injury, the employee becomes partially incapacitated from pursuing his usual and customary line of employment he shall, except in the cases covered by the specific schedule of Section 8, paragraph (e), receive compensation equal to 50% of the difference between the average amount earned before the accident and the average amount which he is earning or able to earn after the accident. The claimant is not shown to have incurred any diminution of earnings.

The case of *William Co. vs. Palush*, 303 Ill. 352 cited by claimant and the quotation therefrom to the effect that it does not follow as a proposition of law that compensation can be denied merely because the employee earned more subsequent to the injury than he did before, involved an award under paragraph (c) of Section 8 for permanent and serious disfigurement of the hand. This case has no application to Section 8 (d). It is only for disfigurement under paragraph (c) or for the specific loss of members covered by the schedules of paragraph (e) that no showing of reduced earnings is required as a basis for recovery. *Nokomis vs. Industrial Commission* 308 Ill. 609.

The decisions of the Supreme Court as well as the decisions of this court have uniformly held that before an award for partial incapacity under paragraph (d) is justified, the claimant must show that he is not earning, or is not able to earn as much as he earned before he was injured. The amount the injured employee is able to earn, will never be less than he actually earns and if the injury does not reduce his earning capacity he is not entitled to compensation for partial disability under paragraph (d). Compensation in such instances is based only on reduced earning capacity and is measured by such loss. *Groveland Coal Co. vs. Industrial Commission*, 309 Ill. 73 at 74; *Consolidated Coal Co. vs. Industrial Commission*, 314 Ill. 526 at 528; *Dial vs. State*, 15 C.C.R. 53.

It is manifest that no award for partial incapacity under paragraph (d) can be made to claimant inasmuch as he has shown no loss of earning capacity as required by the statute.

On the other hand, the evidence of the claimant, supported by Dr. Shabat and to some extent by Dr. Cohen for the respondent, clearly indicates that claimant as a result of the accident, sustained an injury which aggra-

vated a pre-existing arthritic condition and that a disability ensued from such aggravation. Where pre-existing conditions of disease are aggravated by an accidental injury, the disability resulting from such aggravation is compensable. *Chicago Park District vs. Industrial Commission*, 372 Ill. 358; *Bartholomew vs. State*, 15 C.C.R. 117. This doctrine as it relates to a claimed partial incapacity under paragraph (d) is necessarily qualified by the express provision of that paragraph which requires proof of loss of earning capacity before an award could be made thereunder. However, as we have pointed out no such qualification exists in cases of losses covered by the specific schedule of paragraph (e). Loss of earning capacity is not a condition to recovery for specific losses under the last mentioned paragraph. *Nokomis vs. Industrial Commission* supra.

From a careful consideration of the record, we find from a preponderance of the evidence that claimant has sustained a permanent and partial loss of use of both his legs to the extent of 15% which disability can be attributed to the aggravation of his pre-existing arthritic condition. For this permanent and partial loss, claimant is entitled to an award. His compensation rate is \$17.63 as provided by the Act. For the permanent and complete loss of a leg claimant would be entitled to his weekly rate for 190 weeks or \$3,349.70. A 15% loss would entitle claimant to \$502.45 for each leg or \$1,004.90 for both members computed at the rate of \$17.63 per week for 57 weeks.

Claimant has expended \$177.75 for medical services, x-rays, and medicine rendered on account of his injuries for which he is entitled to reimbursement as follows: Dr. L. Willard Shabat, \$140.00; X-rays, \$15.00; Medicines, \$22.75.

A. M. Rothbart, Court Reporting Service, has filed a bill in the sum of **\$43.75** for taking and transcribing the evidence. The charge is fair, reasonable and customary and is allowed.

An award is entered in favor of claimant John O'Dornan for One Thousand Two Hundred Twenty-Six Dollars Forty Cents (**\$1,226.40**) all of which has accrued and is payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

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(No. 3993—Claim denied.)

**SOUTH SIDE PETROLEUM COMPANY, AN, ILLINOIS CORPORATION,**  
Claimant, *vs.* **STATE OF ILLINOIS,** Respondent.

*Opinion filed May 13, 1947.*

**FINN, TOLLKUEHN and SMITH,** for claimant.

**GEORGE F. BARRETT,** Attorney General, **WM. L. MORGAN,** Assistant Attorney General, for respondent.

**OIL INSPECTION ACT OF ILLINOIS**—*claim for refund where overpayment made—fees voluntarily paid—no award for refund of fees paid under mistake of law.* Where claimant paid fees in excess of amount the law required he paid the same under a mistake of law, based upon an erroneous conclusion as to the legal effects of known facts and therefore under the law, payments so made are clearly a mistake of law and are not recoverable.

**SAME**—*failure to comply with Paragraph 172 of the State Government Act, bars award for refund.* Where statute, Paragraph 172 of the State Government Act (Chapter 127—paragraph 172, Ill. Rev. Statutes) provides adequate remedy in courts of general jurisdiction, recourse must be had thereto and failure so to do, bars an award for refund. *Farm Bureau Oil Co. vs. State*, 14 C. C. R. 153.

**DAMRON, J.**

This complaint was filed October 15, 1946 seeking an award to reimburse claimant in the sum of **\$1,935.72.**

Claimant is a wholesale and retail dealer in gasoline, oil, and other petroleum products. Its business is subject to the provisions of Chap. 104, Ill. Rev. Stat. referred to as the Oil Inspection Act of Illinois. Regulation No. 5 adopted by the Department of Revenue pursuant to the Act in part provides that any petroleum product having an end point of 550° F. or less shall be classified as kerosene and subject to inspection.

Claimant alleges that it erroneously paid \$1,935.72 in inspection fees from May 1, 1941 to and including July 1946, on certain of its oil products; that these products had an end point in excess of 550° F.; and therefore were not within the purview of the regulations.

On September 18, 1946, claimant by letter advised the Department of Revenue of the above facts and requested advice as to the procedure to follow so as to obtain an allowance on the over-payment of the aforementioned inspection fees. The Supervisor of the Petroleum Inspection Division of the Department replied that where a distributor voluntarily and wilfully includes fee payments on certain products and subsequently finds that he was in error in so doing and requests restitution, the Department could not be held responsible but that claimant if it so desired, could refer the matter to the State Court of Claims for consideration to which the Department of Revenue would voice no objection.

The above constitutes the essential facts of record pursuant to stipulation of the parties.

The decisions of this Court are consonant with those of our Supreme Court in the affirmation of applicable legal principles which preclude an award on the basis of these facts.

No provision is made in the Oil Inspection Act for refund of fees paid thereunder.

We have repeatedly held that fees and taxes paid voluntarily and without any compulsion or duress, cannot be recovered in the absence of a statute authorizing such recovery. *Warren vs. State*, 14 C.C.R. 84; *Wright & Wagner Dairy Co. vs. State*, 12 C.C.R. 149; *Socony-Vacuum Oil Co. vs. State*, 11 C.C.R. 149.

Moreover, this Court has consistently ruled that an award for refund of fees and taxes paid under similar circumstances must be denied where the claimant has failed to comply with the provisions of Par. 172 of the State Government Act (Ch. 127, Par! 172, Ill. Rev. Stat.).

In *Farm Bureau Oil-Co. vs. State*, 14 C.C.R. 153 we reviewed the well established principle that where a statute of this State provides an adequate remedy in courts of general jurisdiction and a claimant fails to exercise its rights thereunder, it cannot contend the tax was paid involuntarily and this court is thereby precluded from entering any award. Numerous cases were cited in that opinion which enunciate and support this clearly established rule.

Full consideration has been given to the question as to whether the record before us would sanction the conclusion that the payment of the fees in question had been made under a mistake of fact but the record as constituted will not support such conclusion. The burden of proof rests on claimant and this court can only pass upon the record as made and cannot assume or conjecture that essential facts exist which are neither alleged or proven. Nowhere in this record is there any averment or proof that claimant did not know the "fendpoint" rating or degree of its petroleum products at the time it paid the inspection fees thereon. In the absence of such allegation and proof, it would be reasonable to infer that as a dealer, claimant was familiar with the quality and charac-

teristics of the products in which it dealt and that claimant with knowledge of the facts, inadvertently but voluntarily paid the fee thereon although the product was not within the purview of the regulation.

As to this aspect of the record, the present case cannot be logically distinguished from the case of *Socony-Vacuum Oil Co. vs. State, supra*. In that case, claimant erroneously believed that certain of its trucks weighed over 24,000 pounds when fully loaded and paid the required \$250.00 license fees for vehicles in such classification. Subsequently, it discovered the trucks weighed less than 24,000 pounds and that it should have paid only \$150.00 in fees for vehicles under the 24,000 pound classification. It was conceded that the amount paid was in excess of the amount claimant was required to pay under the law. We held in that case that claimant did that which it believed the law required it to do and that under the decisions of this Court and the Supreme Court of this State, reviewed in that opinion, there could be no award for the excess payments.

The error or mistake of claimant in this case, from all evidence appearing in the record, was one as to application of Regulation No. 5 of the Department of Revenue. A mistake of law is an erroneous conclusion as to the legal effect of known facts and therefore under the law, payments made by claimant are clearly a mistake of law and are not recoverable.

For the above reasons, an award is denied and the claim dismissed.

(No. 3997—Claimant awarded \$1,723.07.)

CLARENCE J. FANNIN, Claimant, vs. STATE OF ILLINOIS,  
Respondent.

*Opinion filed May 13, 1947.*

BAKER, LESEMANN, KAGY & WAGNER, for claimant.

GEORGE F. BARRETT, Attorney General and C. ARTHUR  
NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*Highway Police Officer within provisions of—when an accidental injury is deemed to arise out of and during the course of employment—when an award for compensation therefor may be made under.* Where it appears that a Highway Police Officer, while investigating an automobile accident, attempted to have a woman driver accompany him, and in the scuffle that ensued, she stuck her thumb into his right eye, the accidental injury resulting in the loss of said eye is deemed to have arisen out of and during the course of his employment and is compensable under the Workmen's Compensation Act upon compliance with the terms thereof.

BERGSTROM, J.

Complaint was filed on November 12, 1946, wherein claimant alleges that he was injured on December 4, 1945 in the performance of his duties while in the employ of respondent, and seeks to recover for the permanent loss of the sight of his right eye.

The record consists of the Complaint, Departmental Report, Stipulation, Claimant's Brief, and Respondent's Waiver of Brief.

The evidence shows that on December 4, 1945, about 6:00 P. M. claimant was called from his home to investigate an automobile collision which had occurred in front of his house. The driver of one of the cars, a woman, became abusive to the point that it was necessary to prevent her from operating her car. Claimant, who was a highway police officer employed by respondent, placed her under arrest. She refused to accompany him, and in the scuffle that ensued, she stuck her thumb into the officer's right eye.

Previous to this occurrence and during the week of September 3, 1945 claimant had developed an irritation of his right eye which was described as a "cold in the eye" or an "acute inflammation in the right eye." He consulted various doctors, and immediately prior to the injury of December 4, 1945 his eye was responding to treatment prescribed by Dr. G. F. Schwartz of St. Louis, Missouri. Following this latter injury, claimant's eye grew progressively worse, and on December 17, 1945 he requested the Division of State Police to furnish specialized treatment.

On December 27, 1945 claimant was sent to St. Louis, Missouri for an examination and such treatment as should be prescribed by Dr. Lawrence T. Post, Professor and Head of the Department of Clinical Ophthalmology, Washington University, School of Medicine. He examined claimant on that day and reported that the right eye showed a hazy rough cornea with many deposits on the endothelium, pupil slightly and irregularly dilated and fixed by posterior adhesions to the anterior lens capsule over which was gray fibrinous exudate. There was red reflex, but no fundus details were seen. The tension was 34 (Schiotz). The left eye appeared normal externally and ophthalmoscopically. It was his opinion that the patient had a glaucoma in the right eye secondary to a uveitis. From the history he judged that the uveitis was present before the injury from the thumb, but, since there was history of lost vision at the time immediately after this injury, he was of the belief that it undoubtedly was a contributory factor in the present serious condition of the eye.

Dr. Post treated claimant and made various reports of the patient's progress, including one dated April 5, 1946, which reads as follows:

"Replying to your letter of April 3rd, I saw Mr. Fannin yesterday and made the following observation:

"Vision in the right eye, 20/200; tension 11 (normal); pupil, bound; moderate lens opacity. I believe that this is about the maximum vision that he will attain, and I doubt if even this will be held indefinitely. I advised that he might go back to work whenever he desired."

On July 19, 1946 Dr. Post sent in his final report, wherein he stated :

"First examination by me on December 27, 1945, showed vision hand motions at 6 inches right eye and 20/20 vision left eye. With a plus 1.00 sphere add, he read  $3\frac{1}{2}$  point with the left eye. There was a uveitis present in the right eye and the intraocular tension was 34, which indicates that the eye was too hard. I thought that the inflammation was the cause of the glaucoma and that this had either been induced or increased by the blow on the eye. I treated him for many months with a variety of drugs and procedures. Tension became normal and vision slowly improved to a maximum of 20/200. From then on it began to fail because of a secondary cataract in this eye, and when last seen June 21st, vision was 4/200 and the eye quiet. I believe that the vision will fail further as the cataract becomes more mature, but I do not advise the removal as the chance of obtaining good vision even with operation after such an attack of uveitis is almost nothing."

There is also a report from Dr. Howard G. Knapp of East St. Louis, Illinois, which is included in the record by stipulation, dated February 11, 1947, in which he states :

"Today I examined Mr. Fannin's eye. He states that on December 5, 1945 his right eye was injured while he was on duty with the State Highway Patrol.

The uninjured left eye is normal in every respect. Vision is 20/20. There is no evidence of any sympathetic reaction.

The injured right eye deviates outward a varying degree, up to thirty degrees. Lids are normal. The cornea is clear. The anterior chamber is shallow. The iris is atrophic and bound down to the lens by many adhesions. There is almost complete absorption of the pigment layer of the iris. The pupil is filled by a white organized exudate in which iris pigment is incarcerated. There is an opacity of the lens. The fundus is not visible. Vision is finger count (uncertain) at one foot. Light perception is faulty. This represents a one hundred per cent loss of visual acuity in the right eye.

I do not believe there is any danger to the left eye."

Inasmuch as respondent received notice of the accident on the day after it happened and the other juridic-

tional requirements have been satisfied, claimant is entitled to the benefits under the Workmen's Compensation Act. The evidence also shows that the accident arose out of and during the course of claimant's employment by respondent, and as a result thereof, claimant has a permanent loss of the sight of his right eye, aggravated by and fairly attributable to the accident.

Claimant's total earnings from respondent for the year preceding his injury on December 4, 1945, were \$2,363.61. His compensation rate would, therefore, be \$15.00 per week, increased by 20% to \$18.00 per week, the accident having occurred after July 1945. Claimant filed an affidavit that he was unemployed from December 4, 1945, the date of the accident, until September 6, 1946 when he was employed by the Payne and Dolan Construction Company. Dr. Post advised claimant on April 4, 1946 that he might go back to work whenever he desired. From the record, claimant is entitled to receive compensation for total temporary incapacity from December 5, 1945 to April 5, 1946, a period of 17 1/7 weeks at \$18.00 per week, or \$308.57. He is also entitled to receive the additional sum of \$2,160.00 for the loss of the sight of his right eye, computed on the basis of 120 weeks at \$18.00 per week. From these amounts must be deducted the sum of \$745.50 paid to claimant for unproductive time, which leaves the balance he should be paid \$1,723.07.

Respondent paid the sum of \$142.00 to Dr. Lawrence T. Post, St. Louis, Missouri for medical services, and also paid claimant \$244.87 for travel and expenses from his home to St. Louis, Missouri for medical treatment.

An award is therefore entered in favor of claimant, Clarence J. Fannin, in the sum of \$1,723.07, payable as follows :

\$ 604.50 which has accrued and is payable forthwith;  
 \$1,118.57 payable in 62 weekly installments of \$18.00 commencing  
 . May 21, 1947, and a final payment of \$2.57.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

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(No. 4003—Claimant awarded \$1,860.30.)

JOHN ROBKE, Claimant, vs. STATE OF ILLINOIS, Respondent.  
*Opinion filed May 13, 1947.*

FRED BRANSON, for claimant.

GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*employee of Department of Public Works and Buildings within provisions of, when an award may be made for partial permanent loss of use of arm under.* Where an employee of the State sustains accidental injuries, arising out of and in the course of his employment resulting in a 60% partial permanent loss of use of his right arm, an award may be made for compensation therefor, under the provisions of the Workmen's Compensation Act, upon compliance by the employee with the requirements thereof.

ECKERT, C. J.

On February 13, 1945, the claimant, John Robke, was employed by the respondent in the Department of Public Works and Buildings, Division of Highways, as a member of a group clearing dead trees and brush from the right-of-way of Illinois Highway 15 in Washington County. While chopping down a tree, claimant's axe caught in a grapevine and severely wrenched his right shoulder.

Claimant was immediately taken to Dr. A. J. Bauer, at Germantown, Illinois, who prescribed medication and rest. Dr. Bauer, upon examination, found a partial dis-

location of the right shoulder downward, with extensive swelling, and disability to move or elevate the arm. X-rays subsequently taken showed no fracture.

On March 27, 1945 claimant was taken to St. Louis, Missouri for examination and treatment by Dr. J. Albert Key, Professor of Clinical Orthopedic Surgery, Washington University. Dr. Key reported a moderate crepitus on all movements of the shoulder, and pain at the limits of abduction and external and internal rotation. He found, also, motion limited, and a marked weakness, in abduction, together with a moderate tenderness over the greater tuberosity of the humerus, and over the brachial plexus on the side of the neck. Dr. Key stated that X-rays showed no evidence of fracture or dislocation, but showed a moderate atrophy of the upper end of the humerus. His diagnosis was a rupture of the supraspinatus tendon.

After a second examination by Dr. Key, on March 24, 1945, claimant's condition was found unimproved; he was unable actively to abduct his arm more than 45°; movement of the shoulder was accompanied by course crepitus; and the X-rays taken at that time showed some roughening of the tuberosity, Dr. Key stated that claimant's ruptured supraspinatus tendon would not heal, and because of claimant's age he was unwilling to recommend surgery. On May 31, 1945, Dr. Key reported that claimant was able to do light work, and claimant returned to his employment on June 2nd.

The shoulder, however, continued to trouble the claimant, and on May 1, 1946 he was again examined by Dr. Key, who found a rupture of the long head of the biceps, and found that claimant was unable to abduct his shoulder completely, but was able to use the arm fairly

well at levels below the shoulder. Dr. Key still felt that an operation should not be performed.

At the time of the accident, claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this state, and notice of the accident and claim for compensation were made within the time provided by the act. The accident arose out of and in the course of the employment.

During the year immediately preceding the injury, claimant's earnings were \$1,219.50, making a compensation rate of \$13.78 per week. Since claimant was paid compensation by the respondent at that rate for the period of February 14, 1945, to, and including May 31, 1945, no award can be made on account of temporary disability. Claimant's medical and hospital expenses were also fully paid by the respondent. The only question remaining is the extent of claimant's permanent disability.

Dr. Harry E. Ryan, testifying on behalf of claimant, stated that claimant has an atrophy of the upper right arm, more pronounced in the upper part of the biceps muscle, a pronounced inability to raise the right arm, and that the abduction of motion in the right arm is limited to approximately 45°. He found a marked depression in the upper third of the biceps muscle, apparently due to rupture, and a limitation preventing claimant from doing approximately 75% of his work. Dr. Ryan stated that the disability was permanent, and like Dr. Key, doubted the advisability of an operation.

Rosalee Cox was employed to take and transcribe the evidence at the hearing before Commissioner Jenkins. A charge in the amount of \$5.00 was incurred for this service, which charge is fair, reasonable, and customary.

From the record, and the report of Commissioner Jenkins, who observed the claimant, the court is of the

opinion that claimant has suffered a 60% partial permanent loss of use of his right arm. He is, therefore, entitled to an award in the amount of \$13.78 per week, for a period of 135 weeks, or the sum of \$1,860.30.

An award is entered in favor of Rosalee Cox in the amount of \$5.00, payable forthwith.

An award is entered in favor of John Robke in the amount of \$1,860.30, payable as follows :

\$1,405.56, accrued, is payable forthwith;

454.74, is payable in weekly installments of \$13.78, beginning on the 17th day of May, 1947, for a period of 33 weeks.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

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(No. 3025—Claimant awarded \$2,108.30.)

ELVA JENNINGS PENWELL, Claimant. *vs.* STATE OF ILLINOIS.  
Respondent.

*Opinion filed June 5, 1947.*

JOHN W. PREIHS, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

**WORKMEN'S COMPENSATION ACT**—*where award may be made tender.*  
Where employee of the State sustains accidental injuries, arising out of and in the course of her employment, resulting in total permanent disability, an award for compensation for such injuries may be made and for expenses of necessary medical, surgical and hospital services incurred and that may be incurred as are reasonably required to cure or relieve her from the effects of such injuries in accordance with the provisions of the Act, upon compliance by the employee with the terms thereof.

ECKERT, C. J.

Claimant was injured on February 2, 1936, in an accident arising out of and in the course of her employ-

ment as a Supervisor at the Illinois Soldiers' and Sailors' Children's School at Normal, Illinois. The injury was serious, causing temporary blindness and general paralysis. The facts are fully detailed in the case of *Penwell vs. State*, 11 C.C.R. 365, in which an award was made to the claimant of \$5,500.00 for total permanent disability, \$8,-215.95 for necessary medical, surgical, and hospital services expended or incurred to and including October 22, 1940, and an annual pension of \$660.00. On February 10, 1942, a further award was made to claimant for medical and hospital expenses incurred from October 22, 1940 to January 1, 1942, in the amount of \$1,129.82. On March 10, 1943, a further award was made to claimant for medical and hospital expenses from January 1, 1942, to December 31, 1942, in the amount of \$1,164.15. On March 15, 1944, a further award was made to claimant for medical and hospital expenses from January 1, 1943, to and including September 30, 1943, in the amount of \$853.07. On April 17, 1945, a further award was made to claimant for medical and nursing expenses incurred from October 1, 1943, to and including February 28, 1945, in the amount of \$1,955.29. On September 12, 1946 a further award was made to claimant for medical and nursing expenses incurred from February 28, 1945 to and including April 1, 1946 in the amount of \$1,646.12. Claim is now made for an additional award of \$2,258.30 for medical, hospital and nursing expense; from April 1, 1946 to and including April 1, 1947.

Claimant remains totally paralyzed from the waist down, the paralysis being of a spastic type; her physical condition has not improved. She has no control over her lower limbs, nor over urine and faeces. From April 1, 1946 to and including April 1, 1947, she has been required, to relieve her of her injury, and to prevent deformity and

to stimulate circulation, and for relief of bed sores, to employ and receive medical services and nursing attention. She remains helpless, requiring the services of nurses or attendants to move her to and from her bed, to change her bed clothing at least three or four times a day, to administer light treatment to the affected parts of her paralyzed body, and to rub her body with ointments prescribed by her physician. Because of the complete paralysis of her lower abdomen and legs, the functioning of her kidneys and bladder is impaired, and medical attention is required to flush these organs and to prevent infection arising from her impaired circulation and paralysis. The services of a physician are needed almost daily and must be rendered in her home.

Claimant has therefore employed a physician on a monthly basis at a charge of \$90.00 per month, which is a lesser rate than ordinarily charged, and for which she seeks reimbursement in the total sum of \$975.00. Claimant also seeks reimbursement, at the rate of fifty cents per day, in the total amount of \$182.50, for board and room of attending nurses. Such expenditure obviates the employment of both a day and a night nurse. In addition, claimant has expended, for nursing services, \$831.68, and for drugs and supplies, \$119.12. She has submitted to the court, with her verified petition, the original receipts and vouchers showing payment of these respective items.

This court has heretofore held that under Section 8, paragraph (a) of the Workmen's Compensation Act, claimant is entitled to such care as is reasonably required to relieve her of the effects of the injury. (*Pemwell vs. State*, supra). There has been no change in claimant's physical condition to justify the denial of an award at this time. The services claimed appear to have been reasonably required and the charges to be reasonable and

just, excluding the claim in the amount of \$150.00 for the purchase of a wheel chair, which must be denied.

Award is, therefore, made to the claimant for medical and nursing expenses from April 1, 1946 to and including April 1, 1947, in the sum of \$2,108.30, which has accrued and is payable forthwith. The court reserves for further determination claimant's need for further medical, surgical and hospital services.

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(No. 3533—Claim denied.)

NAOMI JEANNE CLIFTON, Claimant, vs. STATE OF ILLINOIS,  
Respondent.

Opinion ~~filed~~ June 5, 1947.

GEORGE W. LAWRENCE and JACK L. SACHS, for claimant.

GEORGE F. BARRETT, Attorney General, and WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*limitations on claims tender—making claim for compensation and filing application therefor within time fixed by Section 24 of Act, condition precedent to jurisdiction of Court.* Where the record discloses that no claim for compensation was made by employee within six months after date of accident, nor application filed therefor within one year after date of injury, no compensation having been paid by employer therefor, the Court is without jurisdiction to proceed with hearing on claim filed thereafter and same must be dismissed.

EVIDENCE—Under rules of this court—a departmental report is *prima facie* evidence of the facts contained therein.

ECKERT, C. J.

On August 17, 1940, claimant, Naomi Jeanne Clifton, filed an "Amended Statement of Claim" in this court seeking an award of \$338.50 for medical, hospital, and nursing services. She alleged these charges were incurred as a result of typhoid fever which she contracted on August 17, 1939, while employed by the respondent at the

Manteno State Hospital. Attached to, and forming a part of the "Amended Statement of Claim" was a petition, sworn to by George W. Lawrence, attorney for claimant, stating that on February 26, 1940 he forwarded to the clerk of this court a petition on behalf of claimant; that he heard nothing further regarding said petition; and that he believed that the same was lost either in the office of the clerk, or between his office and the office of the clerk of this court. Attorney for claimant thereupon moved this court to restore the files, and asked leave to file a true and correct copy of the "original claim." Copy of the "original claim" was also attached to the "Amended Statement of Claim," indicating that it was verified under date of February 26, 1940.

On August 21, 1940, the petition of the claimant for leave to restore the files was denied by this court. The "Amended Statement of Claim", filed as of August 17, 1940, was ordered to stand as claimant's original statement of claim filed as of that date. Subsequently, a "Statement of Claim", filed in this court on September 11, 1945, stated that claimant was employed by the respondent on August 15, 1939, and that while so employed she contracted the illness in question. No other date appears in this statement.

Forming a part of the record, is a departmental report, made by Dr. Walter H. Baer, Managing Officer of Manteno State Hospital, which under the rules of this court is prima facie evidence of the facts contained therein. The date claimant's illness began, in this report, is given as August 1, 1939.

At the hearing before Commissioner East, Mary L. Clifton, mother of claimant, testified that claimant contracted typhoid fever while in the employ of the respondent at the Manteno State Hospital. She made no at-

tempt, however, to fix any date when claimant contracted the disease.

It is also clear from the record that claimant has failed to comply with Section 24 of the Workmen's Compensation Act of this State, which provides that no proceeding for compensation under the act shall be maintained unless claim for compensation has been made within six months after the accident, and unless application for compensation is filed within one year after the date of the injury, where no compensation has been paid, or within one year after the date of the last payment of compensation, where any has been paid. Failure to file application within the one year period, under Section 24, bars the right to file such application thereafter.

The testimony on hearing before Commissioner Blumenthal was taken and transcribed by A. M. Rothbart, Court Reporter, who has submitted a statement of \$13.30 for stenographic services. This charge is reasonable and proper.

An award is therefore entered in the amount of \$13.30 payable to A. M. Rothbart forthwith.

The claim is otherwise denied.

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(No. 3768—Claim denied.)

DAVID COHEN, Claimant, vs. STATE OF ILLINOIS, Respondent.

*Opinion filed June 5, 1947.*

HARRY S. COWEN, Attorney for claimant

GEORGE F. BARRETT, Attorney General, for respondent, WM. L. MORGAN and LEONARD H. LAWRENCE, Assistant Attorneys General, of counsel.

*RETAILERS' OCCUPATIONAL TAX ACT—payment of tax thereunder—after due notice, proper hearing, and subsequent trial in municipal court and judgment—therefor—cannot be recovered—as being paid*

*under a mistake of fact.* Where claimant fails *to* deny that the Department of Finance took and observed all procedural steps required to be taken by it prior to bringing its action to collect, and failed to plead that the taxes were erroneously assessed, it must be assumed that at the time of entry of judgment in the Municipal Court, he owed that amount to the State. The judgment was subsequently affirmed by the Supreme Court of Illinois.

**JURISDICTION**—*Affirmation of a judgment of a lower court by the Supreme Court of Illinois is a final adjudication of such judgment and it must be regarded as free from all error.* After the Supreme Court affirmed judgment of the Municipal Court, claimant succeeded in having the Municipal Court vacate the said same judgment on the ground that the Municipal Court lacked jurisdiction and therefore the said judgment was void *ab initio*. The Court of Claims held the Municipal Court was without jurisdiction to enter an order to vacate its judgment as being void *ab initio* on the ground that when a judgment is affirmed by the Supreme Court, all questions, whether raised by assignment of error or which might have been raised on the record, are finally adjudicated and such judgment must be regarded as free from all error. *People vs. Superior Court*, 234 Ill. 186; *Gould vs. Sternberg*, 128 Ill. 510.

. DAMRON, J.:

On December 9, 1942, the above named claimant filed a complaint in this Court alleging that he is entitled to a refund in the sum of \$1,785.93 from the State, by reason of an erroneous payment of that amount heretofore made by him to the Department of Finance on December 7, 1938.

The claimant, by his attorney, and the respondent, by its Attorney General, have filed herein a stipulation of facts which they agree shall be considered as in lieu of a transcript of evidence pursuant to Rule 16 of this Court and shall constitute the record in this case, and is in words and figures as follows:

1. That on or about September 4, 1937, a suit had been filed by the Department of Finance of the State of Illinois, against the claimant herein, in the Municipal Court of Chicago, Case No. 2779835, claiming the sum of \$1,704.67 in an action of debt, pursuant to the Retailers' Occupation Tax Act, seeking to recover a judgment for said amount for an indebtedness alleged to be due under the said Act, based upon a tax assessment as determined by the said Department of Finance.

2. That on December 23, 1937, a judgment had been recovered against the claimant in the aforesaid suit in the sum of \$1,704.67 and costs, after the said Municipal Court had overruled the defense of the claimant as incorporated in his Second Amended Statement of Defense, in which he had questioned the jurisdiction of the Municipal Court of Chicago over the subject matter of said suit, and thereafter, on December 7, 1938, after the issuance and service of an execution upon the claimant, he had paid in satisfaction of the aforesaid judgment, the sum of \$1,785.93, which represents the amount of said judgment plus statutory interest, but exclusive of court costs.

3. That the said defendant perfected an appeal to the Supreme Court of Illinois, wherein the judgment was affirmed and which is found in Volume 369 of the Illinois Reports beginning at page 511.

4. That the claimant (defendant) herein did not deny and does not now (1) that he had been notified of the hearing to fix his tax liability as required by the act, or (2) that a hearing was had pursuant to such notice, or (3) that a deficiency assessment in the amount claimed had been made by the department, or (4) that he had been notified of the assessment, or (5) that he had not paid it, or (6) that he had taken no steps within the time fixed by section 12 of the act to have the finding of the department judicially determined by suing out a writ of certiorari, nor did he charge the department with failure to observe all the procedural steps required to be taken by it prior to bringing its action to collect.

5. That on November 27, 1942, an order was entered in the aforesaid cause decreeing said judgment as being absolutely void *ab initio* and unenforceable, inasmuch as the Municipal Court had lacked the requisite jurisdiction over the subject matter of said cause.

6. That by reason of the foregoing the aforesaid judgment was vacated, set aside, held for naught and expunged from the records in the Municipal Court, and said cause was dismissed.

7. That the claimant has received no payment, either in full or to apply on account of the aforesaid claim, either from the respondent or any of its departments or divisions having supervision and control of the matter and issues involved in this cause.

8. That after the Municipal Court of Chicago had decreed its judgment in this case as being absolutely void *ao initio* and unenforceable, and had vacated said judgment on November 27, 1942, thereafter, on February 1, 1944, claimant filed a claim for credit or refund with the Department of Finance asking a refund of the moneys paid previously to the said Department in satisfaction of the aforesaid void judgment. Said claim for credit was mailed to the Department of Finance on February 1, 1944 and receipt thereof was acknowledged by the said Department on February 7, 1944. The claim for credit was based upon a payment predicated upon a void judgment and was filed after the court had vacated the said judgment as void. Said claim for credit was denied by the Department and certiorari to review said

record was perfected to the Circuit Court of Cook County. On May 8, 1946, the Circuit Court of Cook County denied the writ of certiorari for the reason that that court was without jurisdiction in the premises.

It is to be noted from examination of this record that claimant in seeking a refund of \$1,785.93 from the respondent bases his claim wholly on a claimed erroneous payment of said amount paid by him under a void judgment of the Municipal Court of the City of Chicago. It further appears from the record that from this judgment claimant appealed to the Supreme Court of this State where the judgment was affirmed. *Department of Finance vs. David Cohen*, 369 Ill. 510, In that case he did not deny that he owed the respondent the above amount of money assessed, against him but challenged the constitutionality of the Act. In the opinion, the Court noted that the affidavit of defense did not deny that appellant had been notified of the hearing to fix his tax liability as required by the Act or that a hearing was had pursuant to such notice, or that a deficiency assessment in the amount claimed had been made by the Department, or that he had been notified of the assessment, or that he had not paid it or that he had taken no steps within the time fixed by Section 12 of the Act to have the finding of the Department judicially determined by suing out a writ of certiorari, nor did he charge the Department with failure to observe all the procedural steps required to be taken by it prior to bringing its action to collect. A motion was made by the Department to strike defendant's affidavit on the ground it failed to state a defense. The motion was allowed and judgment entered for the amount of deficiency and penalties claimed. Even here the claimant did not deny or plead that the taxes assessed against him were erroneously assessed and by his failure to plead this fact, it must be assumed that at the time of the entry of

judgment in the Municipal Court, he owed that amount to the State of Illinois.

It is to be noted that the judgment obtained against this claimant was affirmed on October 17, 1938 by the Supreme Court of this State.

This record contains a 'document marked "Exhibit B"' which is in words and figures as follows :

"This matter coming on for hearing upon motion of DAVID COHEN, doing business as Embassy Drug Shop, defendant in the above entitled cause, for leave to file his petition to vacate and set aside the judgment heretofore entered herein against him on December 23, 1937, in the sum of \$1,704.67 and costs, and

Upon the reading of said petition, it appearing to the Court that said defendant has a full and complete defense to the claim which is the subject matter of the above entitled cause and upon which the aforesaid judgment is predicated, in that the municipal Court of Chicago had not acquired jurisdiction over the subject matter of said cause, and that, therefore, the aforesaid judgment is absolutely void *ab initio* and unenforceable.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that leave be and the same hereby is, given to the said defendant to file the aforesaid petition to vacate the judgment heretofore entered herein against him on December 23, 1937, in the sum of \$1,704.67 and costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the aforesaid judgment be, and the same hereby is, declared to be void and unenforceable, and said judgment be and the same is hereby vacated, set aside, held for naught, and expunged from the records in the above entitled cause, and said cause be, and the same hereby is, dismissed, without costs."

ENTER: (Signed) JOSEPH J. DRUCPER, Judge.

It is to be noted that claimant bases his right to recover from the respondent on the order of the Municipal Court of Chicago which was entered in said Court on the 27th day of November 1942.

By obtaining this order of the Municipal Court Judge, claimant predicates his right to recover on a "void judgment" and contends that since this order was entered, he paid the judgment as a mistake of fact and has filed herein a voluminous brief.

We hold that the order of the Municipal Court of Chicago finding that its judgment against the claimant in favor of the Department of Finance was void ab initio, is not binding and that the Municipal Court was without jurisdiction to enter such an order.

A similar situation arose before our Supreme Court in *The People vs. Circuit Court* 369 Ill. Sup. 438. This was a case wherein one Karatz was tried and found guilty in the Criminal Court of Cook County for conspiracy to defraud. He was sentenced to serve a term of from one to five years in the Illinois State Penitentiary and to pay a fine of \$2,000.00 and costs. That judgment of conviction was confirmed in the Appellate Court, *People vs. Barry*, 287 Ill. App. 12. Upon further review, the Supreme Court confirmed the judgment of the Appellate Court. *People vs. Karatz*, 365 Ill. 255. Thereafter, while the sheriff of Cook County having charge of Karatz under a mittimus issued out of the Criminal Court was proceeding to deliver him to the Illinois State Penitentiary, Joliet, a writ of habeas corpus was served upon him, issued by a Judge of the Circuit Court of Will County. In this case, the Court said "the sole question presented in this cause is that of the jurisdiction of the Circuit Court of Will County and Wilson, one of the judges of the Court, to issue the writ of habeas corpus. The ground on which a writ was sought was that the mittimus under which Karatz was held was void because the grand jury which returned the indictment against him was an illegal and void grand jury."

In holding the Circuit Court of Will County was without power or authority to enter orders concerning the case, the Supreme Court said on page 440 of Ill. Sup. 369,

"It has been so frequently held by this court as to be plain and settled law in this State, of which all inferior courts must be held to

have knowledge, that when a judgment is affirmed by this court all questions, whether raised by assignment of error or which might have been raised on the record, are finally adjudicated, and such judgment must be regarded as free from all error. (*People v. Superior Court*, 234 Ill. 186; *Gould v. Sternberg*, 128 id. 510.) The adjudication of this court in *People v. Karatz*, *supra*, affirmed the conviction of Karatz and pronounced the judgment against him a valid judgment.

While it is true that circuit and superior courts and the judges thereof have concurrent jurisdiction with this court in habeas corpus proceedings, that fact, as this court has held, does not authorize those courts or judges thereof to review a judgment of this Court, by the writ of habeas corpus. When this court, in the exercise of its appellate jurisdiction, has determined the validity of a judgment of the lower court, the judges of the circuit and superior courts are bound by that judgment and are without power or authority, by habeas corpus or otherwise, to pass upon its validity. This is not only well settled in this State but is so thoroughly founded on principles of orderly administration of the law that there ought not to be any judge who doubts or is unfamiliar with it."

Many other cases could be cited to the same effect. The law as announced in the Karatz case is controlling here.

The claimant having failed to establish his right to an award by a preponderance of evidence, the complaint is dismissed.

Award denied.

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(No. 3859—Claimant awarded \$4,451.79.)

FAYE FRENCH, Claimant, vs. STATE OF ILLINOIS, Respondent.

*Opinion filed June 5, 1947.*

FRANK W. PURVIS and FRANK EAGLETON, for claimant.

GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when evidence sufficient to prove a causal connection between the accidental injury sustained by the deceased and his subsequent death—and that said accidental injury had a*

*causative effect in (aggravating his pre-existing disease — when award for compensation for death of employee may be made tender.* Where an employee sustains accidental injuries, arising out of and in the course of his employment and the evidence shows that said injury had a causative effect in aggravating his pre-existing disease and thereby hastened his death, the same is held to have occurred in the course of his employment and an award may be made therefor under Section 7 of the Act to those legally entitled thereto upon compliance with the terms thereof.

BERGSTROM, J.

This claim was denied by an Opinion filed at the January 1946 term of this Court. Upon oral motion on January 9, 1946 a rehearing was allowed. Additional testimony was taken on June 18, 1946 and September 20, 1946.

We found, in the opinion heretofore filed at the January 1946 term of this Court, that no jurisdictional questions were involved, and stated therein with considerable detail the circumstances of decedent's injury and subsequent death. The evidence shows that decedent was injured during the course of and out of his employment by respondent. The only question for determination is whether there was a causal connection between decedent's injury and his subsequent death, and whether his injury had a causative effect in aggravating his pre-existing disease and thereby hastened his death. This claim was denied in our previous opinion for the reason that, claimant had failed to show this by a preponderance of the evidence.

At the hearing two witnesses testified that prior to the injury decedent was apparently in the best of health, and that he had no occasion to see or need a doctor for many years previous to the date of the injury. They further testified that after the injury decedent complained of pains in the abdominal region and thereafter his health began to fail rapidly. Dr. Robert Flentje testified

that he had practiced medicine for **35** years, and that a blow such as decedent received would aggravate an existing cancerous condition. Commissioner Jenkins asked Dr. Flentje some questions, which were answered as follows :

Q. In your opinion, Doctor, would such a blow aggravate a cancerous condition and contribute to or hasten the progress of such cancerous condition?

A. It could.

Q. And in your judgment would it contribute to and hasten the death of a person suffering from such condition?

A. It would. I might simplify that by saying that a cancerous condition is one of the eating away of the flesh and the deeper it goes the more nearly it comes to the larger vessels.

Q. It is a progressive condition?

A. It is a progressive condition.

Q. And its progress would be hastened by such a blow?

A. It would be.

Counsel for claimant asked the Doctor:

Q. Dr. Flentje, in your opinion is it also true that a blow such as Mr. French is described to have received would considerably hasten his death?

A. Yes, it would.

Dr. J. F. Lawson of Sullivan, Illinois, signed a statement on July 9, **1946**, which was filed in the record and reads as follows :

"This is to certify that I am a regular licensed physician in the State of Illinois and have been for the past forty years; that I was personally acquainted with Seth French, during his lifetime, and that I treated him on March 24th, 25th, 26th, 28th and 30th of **1938** for gunshot wounds he received in apprehending some postoffice robbers at Allenville, Illinois, and that the said Seth French received wounds in the chest, arms and face, but that there was no buckshot in the abdomen.

That at the time I treated the said Seth French, he had no indication of cancer; that he was healthy and although I did not treat him for a number of years after that, I did see him at different times, and from general appearance, he showed no indication of cancer.

I further certify that a blow such as Seth French received in the abdomen at that time would at least aggravate an existing cancer if he had such at that time."

Commissioner Jenkins, after hearing the evidence, made a finding that decedent's cancerous condition was aggravated by the injury received while in the course of his employment; that there was a causal connection between such injury and the death of decedent and recommended an award to decedent's widow, Faye French. After a careful review of all the evidence this Court concurs with his views. In a similar case, *Simpson vs. Industrial Commission*, 337 Ill. 454, the Supreme Court said on page 459

"The evidence shows that prior to the day of the accident Carr was a strong, vigorous and active man. He had never been sick and had never required the services of a physician. The evidence of Hammond shows what happened at the time Carr pulled on the rope. He was never well after that time but grew steadily worse until his death. There is no question, under the evidence, but that he died from a lymphatic carcinoma. There is medical evidence which shows that the sarcoma was the result of the strain or sprain of the muscles of the back. If the death is fairly chargeable to an accident suffered in the course of his employment as an efficient cause, compensation may be awarded although the sarcoma existed prior to the accident, provided the sarcoma was aggravated or accelerated by the injury, but there must be a direct relation between the accident and the subsequent death. (*Springfield Coal Co. v. Industrial Com.*, 303 Ill. 455; *Jones Foundry Co. v. Industrial Com.*, 303 id. 410; *Keller v. Industrial Com.*, 302 id. 610; *Centralia Coal Co. v. Industrial Com.*, 301 id. 418.) If the act of Carr in pulling on the rope either caused a sarcoma or aggravated or accelerated a sarcoma which already existed, and his death resulted therefrom, his widow was entitled to compensation."

There were no children under 16 years of age dependent upon the deceased for support at the time of his death. His widow, Faye French, survives him. His earnings from respondent were \$1,787.09 for the year next preceding his death; and the compensation rate would be \$15.00 per week, increased by 17½%, the injury having occurred after July 1, 1943, or \$17.63. Under Section 7, paragraphs a and 1 of the Workmen's Compensation Act, the widow, Faye French, would be entitled to an award

of \$4,700.00, less \$248.21 being the amount of compensation paid, or \$4,451.79.

Eileen Jones, First National Bank Building, Springfield, Illinois, was employed to take and transcribe the evidence in this case, and has rendered a bill in the amount of \$28.20. The Court, finds that the amount charged is fair, reasonable and customary.

An award is entered in favor of Eileen Jones in the amount of \$28.20, payable forthwith.

An award is also entered in favor of the claimant, Faye French, in the amount of \$4,451.79, to be paid to her as follows :

**\$2,820.80**, which has accrued and is payable forthwith;  
\$1,630.99, payable in weekly installments of \$17.63 beginning on the  
16th day of June, 1947 for a period of 92 weeks, with an  
additional final payment of \$9.03.

All future payments being subject to the terms and conditions of the Workmen's Compensation Act of Illinois, jurisdiction of this case is specifically reserved for the entry of such further orders as may from time to time be necessary.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

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(No. 4005—Claimant awarded \$672.00.)

WILLIAM G. VAN GILDER, Claimant, *vs.* STATE OF ILLINOIS,  
Respondent.

*Opinion filed June 5, 1947.*

WARD E. DILLAVOU, for claimant.

GEORGE F. BARRETT, Attorney General, and C.  
ARTHUR NEBEL, Assistant Attorney General, for re-  
spondent.

WORKMEN'S COMPENSATION ACT—*when award may be made for loss of finger — under.* Where an employee of the State sustains accidental injuries arising out of and in the course of his employment, resulting in the loss of his left second finger, an award may be made therefor, under the Workmen's Compensation Act, upon compliance by the employee, with the terms thereof and proper proof of claim for same.

BERGSTROM, J.

Claimant, William G. Van Gilder, filed his claim on January 27, 1947 for compensation under the provisions of the Workmen's Compensation Act for the loss of his left middle or second finger.

On November 13, 1946; claimant and his assistants were assigned to take a truck load of cement from Paris to Champaign, Illinois. About 7:30 A. M. and approximately two miles west of Paris on S.B.I. Route No. 133, claimant stopped his truck to determine what was causing the truck motor to heat. Lifting the truck hood he noticed that the fan belt was not moving. He touched the belt to see if the tension was sufficient. At the moment he touched the belt, it began to move and crushed his left middle finger between the belt and the generator pulley.

Claimant was taken to the Paris Hospital where Dr. H. D. Junkin rendered first aid and amputated the left middle finger through the distal end of the middle phalanx. He was released from the Paris Hospital on November 15, 1946 and returned to work on November 28, 1946. He was paid full salary for the two weeks lost time, and the hospital and medical bills were paid by respondent.

At the time of the accident, claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course of employment.

Claimant 'was married and had two children under

the age of 16 years dependent upon him for support. His earnings for the year preceding his injury totaled \$2,040.00. The accident having occurred after July 1945, the compensation rate would be \$19.20 per week. He is entitled to receive compensation for the loss of his left second finger, which would be computed on the basis of 35 weeks at \$19.20 per week, or \$672.00.

An award is therefore entered in favor of claimant, William G. Van Gilder, in the amount of \$672.00, payable as follows:

\$556.80, which has accrued and is payable forthwith:

\$115.20, payable in weekly installments of \$19.20, beginning on the 11th day of June, 1947, for a period of six weeks.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

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(No. 4010—Claimant awarded \$351.00.)

FRED W. BANE, Claimant, vs. STATE OF ILLINOIS, Respondent.

*Opinion filed June 5, 1947.*

CLAIMANT, pro se.

GEORGE F. BARRETT, Attorney General, C. ARTHUR NEBEL, Assistant Attorney General, for respondent..

**WORKMEN'S COMPENSATION ACT**—*when an award may be made for permanent partial loss of thumb under.* Where an employee of the State sustains accidental injuries, arising out of and in the course of his employment resulting in a 25% permanent loss of his right thumb, an award may be made for compensation therefor, under the provisions of the Workmen's Compensation Act—upon compliance by the employee with the terms thereof.

DAMRON, J.

This is a claim for benefits under the Workmen's Compensation Act.

The record consists of the complaint, filed on February 27, 1947; Exhibits 1, 2, and 3; Departmental report; Stipulation; Waivers of both claimant and respondent to file brief, statement and argument.

The stipulation provides that the departmental report and the report of Dr. G. W. Staben attached thereto, shall constitute the record in this case.

The departmental report, filed May 7, 1947, signed by Secretary of State, Edward J. Barrett, is as follows:

"Fred W. Bane resides at 1409 North 9th Street, Springfield, Illinois. The place of accident was the Engine Room of the State Power Plant directly north of the State Capitol Building. Mr. Fred W. Bane was working on No. 3 engine in the engine room of the power plant about 9:30 a. m. on the morning of September 30, 1946. He, along with four other employees was engaged in repairing and tightening the piston on stem inside the cylinder of the engine. The piston of No. 3 engine came loose on piston rod which then required removal of cylinder head. In order to reset piston it's necessary to turn engine over by hand power to get dead centers on both ends to get proper setting. The large fly wheel is revolved by means of ratchet with a long lever for power has a dog which engages in sockets on fly wheel. This is the way the fly wheel is revolved. The dog failed to catch in socket at one point of operation. Mr. Bane reached down to place dog in socket at this point. His thumb was caught between the dog and socket, causing it to be crushed before it could be released.

The Department of Public Health was called and they immediately sent a doctor to the Power Plant, who gave first aid treatment and advised that Mr. Bane be sent to the hospital. Mr. Johnson, Chief Operator of the Power Plant took him to the hospital, where Dr. Staben was called and an X-Ray was taken and the finger was found to be crushed, the bone being chipped. Dr. Staben set the finger, putting it in a splint and released Mr. Bane from the hospital, advising him to come to his office for further treatment, which covered a period of about three months. When Dr. Staben released Mr. Bane the thumb was still very painful and is still giving him pain. At the time the doctor released Mr. Bane he advised him that this thumb would always be partially disabled due to the fact that the second joint of the thumb is stiff. Mr. Bane has no feeling in his thumb.

Mr. Bane received his salary only during his period of disability which was very short. Mr. Bane is claiming a doctor bill of \$26.50 and hospital bill of \$9.50 making a total of \$36.00 for care of thumb. In addition he is claiming 25% permanent disability to the thumb, as advised by his doctor for the reason that it hinders him in the performance of certain work.

Due to the fact that Mr. Bane was hurt at the power plant, the office was notified immediately, Mr. Johnson, Chief Operator, being at the scene of the accident. Mr. Johnson reported this immediately to Peter F. Rossiter, Superintendent of Buildings on September 30, 1946. Our records show Mr. Bane was 59 years of age at the time of injury."

Exhibit 1 introduced in this record is a bill for services rendered claimant by Dr. Staben amounting to \$26.50; Exhibit 2 is a bill of St. Johns Hospital for services rendered to claimant amounting to \$9.50.

The report of Dr. G. W. Staben, referred to in the stipulation and marked "Exhibit 3" is as follows:

"Mr. Fred Bane has been under my care from Sept. 30, 1946 to December 11, 1946 due to an injury to his right thumb. He has approximately 25% permanent disability in right thumb due to loss of motion in the distal joint of the thumb."

From this record we find that no jurisdictional questions are involved and the only question to be determined is the nature and extent of claimant's injury. Dr. Staben, the treating physician estimates claimant sustained 25% functional loss of use of his right thumb and that it is permanent. We accept this as a basis of the award.

Claimant's annual earnings for the year preceding the injury were \$3,850.00, his compensation rate therefore is \$18.00. Claimant is entitled to the sum of \$315.00 representing 25% permanent loss of his right thumb; the sum of \$36.00 expended by him for medical and hospital services making a total of \$351.00.

An award is therefore hereby entered in favor of Fred W. Bane in the sum of Three Hundred Fifty-One (\$351.00) Dollars all of which has accrued and is payable forthwith, in a lump sum.

This award is subject to the approval of the Governor as provided in Section 3 of, "An Act concerning the payment of compensation awards to State employees."

(No. 4016—Claimant awarded \$88.76.)

CHARLES TOLER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

*Opinion filed June 5, 1947.*

EDWIN F. LOWENSTEIN, for claimant.

GEORGE F. BARRETT, Attorney General, and C:  
ARTHUR NEBEL, Assistant Attorney General, for re-  
spondent. .

**HIGHWAY—Damages—claimant drove his automobile into unguarded excavation ~~an~~ road—when award for damages thereof justified.** Where there is a showing that the State negligently failed to warn against, barricade or guard ~~an~~ excavation in the road where a portion of the pavement had been removed, and that because of the rain and darkness claimant drove his automobile into said excavation thereby damaging the same, ~~an~~ award for said damage is justified.

BERGSTROM, J.

Claimant filed his claim on March 26, 1947 to recover the sum of \$88.76 for damages to his 1946 Ford sedan caused by an open excavation on Highway 37 on October 25, 1946.

The record consists of the Complaint, Respondent's Answer, Claimant's Waiver of Brief, and Respondent's Waive; of Brief. The claimant alleges, that the evidence shows, that on or about October 25, 1946 claimant was driving along a portion of Highway 37 at about 7:30 in the evening at a point approximately about 4 miles south of the City of Marion, and while so driving drove into an excavation in the road, where a portion of the pavement had been removed.

The evidence further shows that this excavation measured about 6' x 9' to the full depth of the pavement approximately 8"; that it was a dark, rainy evening, and the excavation was filled with water; that there was no light, barricade, or anything else to warn the claimant of this dangerous condition; that as a direct and proximate

result of the negligence of the respondent, claimant's 1946 Ford Sedan was damaged to the extent of \$88.76; that there was paid to claimant by the American States Insurance Company the sum of \$38.76 because of a collision insurance policy they carried on his car, and to which amount the company is entitled to reimbursement by reason of its right to subrogation under the policy; and that the claimant has not received reimbursement of the \$50.00 damage sustained by him.

The evidence further shows that the claimant was the sole owner of the car which was damaged as aforesaid.

Claimant is entitled to an award in the amount of \$50.00 covering the unreimbursed amount of his damage, and also an award of \$38.75 for the use of American States Insurance Company.

An award is therefore entered in favor of claimant, Charles Toler, for the sum of \$50.00, and an award is also entered to Charles Toler for the use of American States Insurance Company for the sum of \$38.76.

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(No. 4018—Claimant awarded \$5,340.00.)

MARION G. ROBERTSON, WIDOW OF HAROLD ROBERTSON, DECEASED, FOR HERSELF AND AS NEXT FRIEND AND MOTHER OF HAROLD G. ROBERTSON, A MINOR, Claimant, vs. STATE OF ILLINOIS, Respondent.

*Opinion filed June 5, 1947.*

MARION G. ROBERTSON, pro se.

GEORGE F. BARRETT, Attorney General, and C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

*WORKMEN'S COMPENSATION ACT—Rehabilitation Counselor—State Department of Registration and Education within provisions of—when injuries sustained in automobile collision resulting in death—deemed to be arising out of and in the course of employment—when award for*

*compensation therefor may be made under Section 7 (a) of Act.* Where an employee of the State in traveling by automobile, in pursuance of instructions from his department to attend a training conference, meets with an accident by colliding with a tractor-trailer on road, and sustains accidental injuries, resulting in his death, the same are deemed to have arisen out of and in the course of his employment and are compensable under the Act; an award may be made for compensation for his death under Section 7 (a) of the Act to those legally entitled thereto upon compliance with the requirements thereof. This question has been decided affirmatively by this Court in cases of *Miller vs. State and Taylor vs. State*, ante, this volume.

BERGSTROM, J.

This claim is brought by Marion G. Robertson, widow of Harold Robertson, in her own behalf, and behalf of her minor son, Harold G. Robertson, against the State of Illinois, under Section 7(a) of the Workmen's Compensation Act.

The record consists of the Complaint, Departmental Report, Claimant's Waiver of Brief and Respondent's Waiver of Brief.

The decedent was employed on July 7, 1946 by the State Department of Registration and Education as a Rehabilitation Counselor. By a memorandum sent to all Rehabilitation Counselors from the Office of the State Supervisor, Division of Rehabilitation, decedent was requested to attend a training conference for the blind at Bloomington, Illinois, to be held October 14, 1946 through October 19, 1946. Hotel reservations had been made by respondent for decedent at the Illinois Hotel, Bloomington, for the night of October 13, 1946 through October 18, 1946. That in pursuance of said orders and instructions, decedent, the said Harold Robertson, left his office in Harrisburg on October 13, 1946 and drove his automobile northward toward his destination of Bloomington, with the intention of attending said conference the following morning. At about 9:00 P. M. October 13, 1946 at a point

approximately two miles south of Bloomington, Illinois, on U. S. Route 66, decedent's automobile collided with a tractor-trailer which was parked and standing facing in a northerly direction on the east side of the pavement. The tractor-trailer was standing on said pavement in total darkness, the driver having failed and omitted to place lights, flares or other warning signals. As a result of said collision, decedent, Harold Robertson, sustained injuries which caused his death on the following day, October 14, 1946.

The record further discloses that the Department of Registration and Education had immediate notice of decedent's death as a result of this accident, and as complaint herein was filed within six months of the date of death the provisions of Section 24 of the Compensation Act have been fully met.

The only question to be decided is whether an employee of the respondent who is traveling as required by his employment is entitled to compensation under the Workmen's Compensation Act. This question has been decided affirmatively by this court in the cases of *Lilla M. Miller vs. State of Illinois*, No. 3991, 16 C.C.R., and *Margaret L. Taylor vs. State of Illinois*, No. 3996, 16 C.C.R.

Respondent paid decedent a salary of \$225.00 per month, which is the salary paid to persons of the same class in the same employment. Claimant is entitled to an award in the sum of \$4,450.00. Since the death occurred subsequent to July 1, 1945 this must be increased 20%, making a total award of \$5,340.00. The weekly compensation rate is the maximum of \$15.00, increased 20%, or \$18.00 per week.

An award is therefore entered in favor of claimant,

Marion G. Robertson, in the amount of \$5,340.00, to be paid to her as follows:

\$ 612.00 accrued, is payable forthwith;  
\$4,728.00 is payable in weekly installments of \$18.00, beginning on the 16th day of June, 1947 for a period of 262 weeks, with an additional final payment of \$12.00.

All future payments being subject to the terms and conditions of the Workmen's Compensation Act of Illinois, jurisdiction of this cause is specifically reserved for the entry of such further orders as may from time to time be necessary. .

This award is subject to the Approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

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